

FILED
12-06-2024
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 21AP1399-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

MORRIS V. SEATON,

Defendant-Respondent-Petitioner.

PETITION FOR REVIEW

MELINDA A. SWARTZ

State Bar No. 1001536

LAW OFFICE OF MELINDA SWARTZ
LLC

5215 North Ironwood Road, Suite 216A

Milwaukee, WI 53217

(414) 270-0660

E-mail: melinda@mswartzlegal.com

Attorney for Defendant-Respondent-
Petitioner

TABLE OF CONTENTS

	Page
ISSUES PRESENTED	3
CRITERIA FOR REVIEW	4
STATEMENT OF THE CASE	7
ARGUMENT	9
I. This Court should accept review to determine whether credibility is a stand-alone acceptable purpose for the admission of other acts evidence pursuant to Wis. Stat. § 904.04(2)(a).....	9
II. This Court should accept review to determine whether this Court’s holding in <i>State v. Alsteen</i> , that evidence of a prior non-consensual sexual act with a different individual is not relevant to prove a complainant’s lack of consent remains controlling law given the enactment of Wis. Stat. § 904.04(2)(b)1, greater latitude.	13
III. This Court should accept review to determine whether the circuit court properly exercised its discretion in denying the State’s motion to admit other acts evidence.	14
CONCLUSION	16
CERTIFICATION AS TO FORM/LENGTH	18
CERTIFICATION AS TO APPENDIX	18

ISSUES PRESENTED

1. Whether credibility is a stand-alone permissible purpose for the admission of other acts evidence pursuant to Wis. Stat. § 904.04(2)(a).

In denying the State's motion to admit other acts evidence, the circuit court found that bolstering the alleged victim's credibility was not a stand-alone permissible purpose under Wis. Stat. § 904.04(2)(a).

The court of appeals found that credibility on its own was a permissible purpose under Wis. Stat. § 904.04(2)(a).

2. Whether this Court's holding in *State v. Alsteen*¹, that evidence of a prior non-consensual sexual act with a different individual is not relevant under Wis. Stat. § 904.01 to prove a complainant's lack of consent, remains controlling law following the 2014 enactment of Wis. Stat. § 904.04(2)(b)1, greater latitude?

The circuit court did not address this question.

The court of appeals concluded that, despite this Court's plain language in *Alsteen*, *Alsteen* is not controlling law given the subsequent enactment of § 904.04(2)(b)1, greater latitude, and this Court's *State v. Dorsey*² decision.

3. Whether the circuit court properly exercised its discretion in denying the State's motion to admit other acts evidence?

The circuit court did not address this issue. The court of appeals concluded that the circuit court erroneously exercised its discretion in denying the motion to admit other acts evidence.

¹ 108 Wis. 2d 723, 729-731, 324 N.W.2d 426 (1982).

² 2018 WI 10, 379 Wis. 2d 386, 906 N.W.2d 158.

CRITERIA FOR REVIEW

Review is warranted because the issue of whether credibility is a stand-alone permissible purpose for the admission of other acts evidence is a question of law likely to recur unless resolved by this Court and this Court's decision will help develop, clarify, and harmonize the law. Wis. Stat. 809.62(1r)(c)(3).

Wisconsin law prohibits the admission of other acts evidence to show that a defendant has a character trait and acted in conformity with that trait. Wis. Stat. § 904.04(2)(a). However, other acts evidence may be admitted if offered for a permissible purpose under Wis. Stat. § 904.04(2)(a), is relevant under Wis. Stat. § 904.01, and its probative value is not substantially outweighed by the risk of unfair prejudice, under Wis. Stat. §904.03. *State v. Gutierrez*, 2020 WI 52, ¶29, 391 Wis. 2d 799, 943 N.W.2d 870 (citing *State v. Sullivan*, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998)).

Wis. Stat. §904.04(2)(b)1, greater latitude, provides that in certain crimes, including third-degree sexual assault, evidence of similar acts by the accused is admissible regardless of whether the victim of the current offense and the similar act are the same person. Wis. Stat. §904.04(2)(b)1. The greater latitude rule provides a more liberal admission of other acts evidence, and courts analyzing the admission of other acts evidence under this statutory subsection apply greater latitude to each *Sullivan* prong. *See Dorsey*, 379 Wis. 2d 386, ¶¶ 32-33.

Wis. Stat. § 904.04(2)(a) enumerates several permissible purposes: motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Other permissible purposes are established in case law.

This Court has not held that credibility is a stand-alone permissible purpose for the admission of other acts evidence under 904.04(2)(a). In two prior cases presenting unique circumstances, this Court concluded that, intertwined with other permissible purposes, credibility was also a permissible purpose under 904.04(2)(a). *See State v. Hunt*, 2003 WI 81, ¶¶ 58-60, 263 Wis. 2d 1, 666 N.W.2d 771; *see also State v. Marinez*, 2011 WI 12, ¶¶ 26-28, 331 Wis. 2d 568, 797 N.W.2d 399.

The court of appeals' published ruling here is that credibility is a stand-alone permissible purpose which, if this Court does not accept review, will apply to all criminal cases. Permissible purposes under the first prong of the *Sullivan* test are not charge-type specific.

The rule that credibility is a stand-alone permissible purpose would open the floodgates to the admission of other acts credibility evidence in nearly all criminal cases. Victims', witnesses', and defendants' credibility is at issue in nearly all, if not all, criminal cases. The court of appeals' ruling would thus render the §904.04(2)(a) limits on propensity evidence inapplicable in all criminal cases. In effect, the applicable rule would be that §904.04(2)(a) does not apply to criminal prosecutions. Additionally, in prosecutions involving the crimes listed in Wis. Stat. § 904.04(2)(b)1, the applicable rule would not be one of "greater latitude" but that Wis. Stat. § 904.04(2)(a) simply does not apply.

Given that both the prosecution and the defense would be able to file and litigate motions to admit other acts evidence with credibility alone as a permissible purpose, this is a question of law likely to recur throughout Wisconsin circuit courts. This Court needs to develop, clarify, and harmonize the law of whether credibility is a stand-alone permissible purpose for the admission of other acts evidence. *See Wis. Stat. 809.62(1r)(c)(3)*.

Review is also warranted for this Court to determine whether this court's ruling in *State v. Alsteen*, that evidence of a prior non-consensual sexual act with a different individual is not relevant under Wis. Stat. § 904.01 to prove a complainant's lack of consent remains controlling law following the 2014 enactment of Wis. Stat. § 904.04(2)(b)1, greater latitude.

In *Alsteen*, this Court clearly stated that past acts of nonconsensual sexual intercourse cannot be introduced to prove lack of consent in the current offense. 108 Wis. 2d 723, 730, 324 N.W.2d 426 (1982) This Court concluded that testimony about Alsteen's prior acts was not relevant under Wis. Stat. § 904.01 because it had no probative value on the complainant's consent. *Id.* This Court explained: "Consent is unique to the individual." *Id.* The fact that one complainant may have been assaulted does not tend to prove that another individual would never consent to sexual intercourse with the defendant. *Id.*³ In *State v. Cofield*, the court of appeals followed *Alsteen*, and reversed the trial court's admission of an earlier non-consensual act. 2000 WI App 196, 238 Wis. 2d 467, ¶10, 618 N.W.2d 21.

Here, the court of appeals acknowledged *Alsteen*'s holding but distinguished it because it predates the enactment of Wis. Stat. § 904.04(2)(b)1. *Seaton*, ¶¶ 22-30. (App. 12-17). The court also relied on the *Dorsey* decision, a domestic violence case, in which the court admitted the prior acts for the permissible purposes of intent and motive. 379 Wis. 2d 386, ¶41. The court concluded admission of this evidence was consistent with *Dorsey* which interpreted and applied Wis. Stat. § 904.04(2)(b)1 and concluded that bolstering a current alleged victim's credibility is also a

³ The *Alsteen* decision was based on a finding that the prior act was not relevant, *Id.* at 729-731, and, as a pre-Sullivan framework case, did not reach the issue of whether the other act evidence met a permissible purpose under Wis. Stat. § 904.04(2). *See Id.*

relevant use of other acts evidence in he-said-she-said type cases. *Id.* ¶¶ 26-30 (App. 14-17)

The court of appeals' decision on this issue effectively overrules *Alsteen* and *Cofield*. However, only this Court can overrule its own prior cases and court of appeals caselaw, *Cook v. Cook*, Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997), and this Court has not overruled *Alsteen* or *Cofield*. Review is warranted because the court of appeals' decision on this issue conflicts with this Court's controlling opinion in *Alsteen*. Wis. Stat. 809.62(1r)(d).

Further, given the enactment of Wis. Stat. § 904.04(2)(b)1 and the application of greater latitude to cases involving third degree sexual assaults, there is a need for this Court to develop and clarify the law of whether a prior non-consensual sexual act with a different individual is relevant under Wis. Stat. § 904.01 to prove a complainant's lack of consent. This is a question of law likely to recur unless resolved by this Court. Review is therefore also warranted under Wis. Stat. 809.62(1r)(c)(3).

STATEMENT OF THE CASE

The defendant, Morris V. Seaton, was charged with third degree sexual assault for an allegation that he had sexual intercourse with a close friend without her consent in her bed after she had invited him to her home for a night of drinking. The State filed a pretrial motion to introduce other acts evidence of a prior uncharged allegation of nonconsensual sex with a different woman. (21; App. 41-49)

The circuit court denied the State's motion. (46:24-27; App. 37-40) The court, applying the *Sullivan* three-step analysis for other acts evidence admission, concluded that the other act did not meet the State's proffered purposes of identity, plan, and modus operandi and that bolstering the

complainant's credibility was not itself a stand-alone permissible purpose. (46:24,26-27; App. 37, 39-40) The circuit court concluded that, even with the application of the greater latitude rule, the other acts evidence was not offered for a permissible purpose and not similar enough to the instant case and denied the motion. (46:27; App. 40)

The State filed a Wis. Stat. § 974.05(1)(d)2 interlocutory appeal. Following briefing, the court of appeals certified the case to this Court. (App. 50-65) After briefing and oral argument, this Court vacated its order accepting certification and remanded the case to the court of appeals, explaining it was equally divided on whether to affirm or reverse the circuit court's order⁴ (App. 66-68).

On remand, the court of appeals, in a decision recommended for publication, reversed the circuit court's denial of the State's motion to admit the other acts evidence. *State v. Seaton*, 2021AP1399, slip op. (Wis. Ct. App. November 6, 2024, recommended for publication) (App. 3-21). The court of appeals concluded that, because the State offered the evidence for multiple permissive purposes – motive, identity, plan, opportunity, modus operandi, intent, context, and credibility, the circuit court's determination that the State had not met the permissible purpose requirement was an “erroneous belief” and therefore an erroneous exercise of discretion. *Id.* at ¶¶ 14,17-18 (App. 9-11). The court concluded that credibility was a permissible purpose on its own, specifically asserting that this Court recognized in *State v. Martinez* that “credibility *is* a permissible purpose under Wis. Stat. § 904.04(2)(a). *See Martinez*, 331 Wis. 2d 568, ¶27[.]” *Id.* at ¶ 19 (App. 11). The court concluded that the circuit court's belief that credibility was not a permissible purpose on its own was erroneous. *Id.*

⁴ The Honorable Janet C. Protasiewicz did not participate. (App. 68)

The court also concluded that, despite *Alsteen*'s clear holding that past acts of nonconsensual sexual intercourse are not relevant under Wis. Stat. § 904.01 and are inadmissible to prove lack of consent in the current offense, the court distinguished the current case as "meaningfully different" because *Alsteen* predated the enactment of Wis. Stat. § 904.04(2)(b)1. *Seaton*, ¶¶ 22-30. (App. 12-17). The court also concluded admission of this evidence was consistent with this Court's *Dorsey* decision interpreting and applying Wis. Stat. § 904.04(2)(b)1 in a domestic violence case in which this Court concluded that bolstering a current alleged victim's credibility is a relevant use of other acts evidence in he-said-she-said type cases. *Id.* ¶¶ 26-30 (App. 14-17) The court of appeals found that the other acts evidence was relevant on several grounds, to assessing both the complainant's and Mr. Seaton's credibility on the issue of consent, to Mr. Seaton's modus operandi and to his motive. *Id.* ¶¶ 30-33 (App. 16-19) The court concluded, contrary to the circuit court's finding, that the acts were similar and further concluded that the risk of prejudice does not substantially outweigh the evidence's probative value. *Id.* ¶¶ 34-37 (App. 19-37)

ARGUMENT

I. This Court should accept review to determine whether credibility is a stand-alone acceptable purpose for the admission of other acts evidence pursuant to Wis. Stat. § 904.04(2)(a).

Wis. Stat. §904.04(2)(a) prohibits the admission of evidence that the accused committed some other act which tends to show that the accused has a particular character trait, and that the accused acted in conformity with that trait. *Sullivan*, 216 Wis. 2d at 782. Other acts evidence may be admitted 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)(a).

In *Sullivan*⁵, this Court promulgated the three-step analysis for admitting or excluding other acts evidence: 1) is the evidence offered for a permissible purpose under Wis. Stat. § 904.04(2)(a), 2) is the other acts evidence relevant under Wis. Stat. § 904.01, and 3) is the evidence's probative value substantially outweighed by the danger of unfair prejudice under Wis. Stat. §904.03. *State v. Dorsey*, 2018 WI 10, ¶8, 379 Wis. 2d 386, 906 N.W.2d 158.

In 2014, the legislature enacted Wis. Stat. §904.04(2)(b)1, greater latitude, which provides that in certain crimes, including third-degree sexual assault, evidence of similar acts by the accused is admissible regardless of whether the victim of the current offense and the similar act are the same person. Wis. Stat. §904.04(2)(b)1. Courts analyzing the admission of other acts evidence under this statute apply greater latitude to each *Sullivan* prong. *See Dorsey*, 379 Wis. 2d 386, ¶33. While the greater latitude rule permits a more liberal admission of other acts evidence, the rule does not relieve the court of its “duty to ensure that the other acts evidence is offered for a proper purpose, is relevant, and its probative value is not substantially outweighed by undue prejudice.” *State v. Gutierrez*, 2020 WI 52, ¶29, 391 Wis. 2d 799, 943 N.W.2d 870 (citation omitted).

Permissible purposes are either enumerated in Wis. Stat. § 904.04(2)(a) and/or established by case law. Contrary to the court of appeals' finding here, this Court has not held that credibility is a stand-alone permissible purpose for the admission of other acts evidence under 904.04(2).

In two prior cases presenting unique circumstances, this Court concluded that, intertwined with other permissible purposes, credibility was also a permissible purpose under 904.04(2). In *State v. Hunt*, the defendant

⁵ 216 Wis. 2d at 772-73.

was charged with sexual assaults of AJ, a woman living with his family as his “second” wife, and her 15-year-old daughter, TJ, with whom Hunt had fathered a child. 2003 WI 81, ¶¶ 8-13, 263 Wis. 2d 1, 666 N.W.2d 771. In addition to AJ and TJ, the police interviewed the family members; both victims and the witnesses later recanted their statements to the police and were uncooperative with the prosecution. *Id.* at ¶¶ 12-14. This Court concluded that Hunt’s prior acts of drug use, and prior physical and sexual abuse of TJ, AJ, and his wife, RH, were admissible for multiple purposes, including context of the unique circumstances in the Hunt household, opportunity, and motive. *Id.* ¶¶ 15, 58. Notably, the other acts evidence provided a context for the victims’ and witnesses’ fear of Hunt and their pattern of recantations. *Id.* ¶58. The evidence was also permissible for the purposes of showing the victim’s state of mind, to corroborate information provided to the police, and to establish the victims’ and witnesses’ credibility “in light of their recantations.” ¶¶58-59.

In *Marinez*, a child sexual assault case, *Marinez*’s prior act of burning the victim’s hand was admissible for the purposes of establishing the five-year-old victim’s identification of the defendant, to provide a more complete context for the child victim’s statements and to provide greater information for the jury to assess the victim’s credibility. 331 Wis. 2d 568, ¶¶7-9, 11, 26-28. Citing *Hunt*, this Court stated that it had “previously recognized that context, credibility, and providing a more complete background are permissible purposes under Wis. Stat. § 904.04(2)(a).” 331 Wis. 2d 568, ¶ 27 (citing *Hunt*, 263 Wis. 2d 1, ¶58). Noting that *Hunt* established context and credibility as permissible purposes “in certain circumstances”, the Court explained “[l]ike in *Hunt*, the admission of the other acts evidence was appropriate given the unique nature of this case.” *Id.* ¶ 28.

To conclude that credibility was a stand-alone permissible purpose, the court of appeals relied on the *Marinez*’s court’s statement, citing *Hunt*,

that it had previously recognized context, credibility, and a more complete background as permissible purposes. *Seaton*, ¶¶ 17, 19. (App. 10-11). However, this Court did not conclude in either *Hunt* or *Marinez* that a victim's or witness's credibility is a stand-alone permissible purpose under Wis. Stat. § 904.04(2)(a).

The court of appeals' published ruling here is that credibility is a stand-alone permissible purpose which, if this Court does not accept review, will apply to all criminal cases. Permissible purposes under the first prong of the *Sullivan* test are not charge-type specific.

The rule that credibility is a stand-alone permissible purpose would open the floodgates to the admission of other acts credibility evidence in nearly all criminal cases. Victims', witnesses', and defendants' credibility is at issue in nearly all, if not all, criminal cases. The court of appeals' ruling would thus render the § 904.04(2)(a) limits on propensity evidence inapplicable in all criminal cases. In effect, the applicable rule would be that § 904.04(2)(a) does not apply to criminal prosecutions. Additionally, in prosecutions involving the crimes listed in Wis. Stat. § 904.04(2)(b)1, the applicable rule would not be one of "greater latitude" but that Wis. Stat. § 904.04(2)(a) simply does not apply.

Given that both the prosecution and the defense would be able to file and litigate motions to admit other acts evidence with credibility alone as a permissible purpose, this is a question of law likely to recur throughout Wisconsin circuit courts. This Court needs to develop, clarify, and harmonize the law of whether credibility is a stand-alone permissible purpose for the admission of other acts evidence. Review is therefore warranted under Wis. Stat. § 809.62 (1r)(c)(3).

II. This Court should accept review to determine whether this Court's holding in *State v. Alsteen*, that evidence of a prior non-consensual sexual act with a different individual is not relevant to prove a complainant's lack of consent remains controlling law given the enactment of Wis. Stat. § 904.04(2)(b)1, greater latitude.

Review is also warranted for this Court to determine and clarify whether this court's ruling in *State v. Alsteen*, that evidence of a prior non-consensual sexual act with a different individual is not relevant under Wis. Stat. § 904.01 to prove a complainant's lack of consent remains controlling law. This is an issue of law likely to recur.

In *Alsteen*, this Court clearly stated that past acts of nonconsensual sexual intercourse cannot be introduced to prove lack of consent in the current offense. 108 Wis. 2d 723, 730, 324 N.W.2d 426 (1982) This Court concluded that testimony about Alsteen's prior acts was not relevant under Wis. Stat. § 904.01 because it had no probative value on the complainant's consent. *Id.* This Court explained: "Consent is unique to the individual." *Id.* The fact that one complainant may have been assaulted does not tend to prove that another individual would never consent to sexual intercourse with the defendant. *Id.*⁶

In *State v. Cofield*, the court of appeals followed *Alsteen*, and reversed the trial court's admission of an earlier non-consensual act. 2000 WI App 196, 238 Wis. 2d 467, ¶10, 618 N.W.2d 21.

Here, the court of appeals acknowledged *Alsteen*'s holding but distinguished it because it predates the enactment of Wis. Stat. §

⁶ The *Alsteen* decision was based on a finding that the prior act was not relevant, *Id.* at 729-731, and, as a pre-Sullivan framework case, did not reach the issue of whether the other act evidence met a permissible purpose under Wis. Stat. § 904.04(2). *See Id.*

904.04(2)(b)1. *Seaton*, ¶¶ 22-30. (App. 12-17). The court also relied on the *Dorsey* decision, a domestic violence case, in which the court admitted the prior acts for the permissible purposes of intent and motive. 379 Wis. 2d 386, ¶41. The court concluded admission of this evidence was consistent with *Dorsey* which interpreted and applied Wis. Stat. § 904.04(2)(b)1 and concluded that bolstering a current alleged victim's credibility is also a relevant use of other acts evidence in he-said-she-said type cases. *Id.* ¶¶ 26-30 (App. 14-17)

The court of appeals' decision on this issue effectively overrules *Alsteen* and *Cofield*. However, only this Court can overrule its own prior cases and court of appeals caselaw, *Cook v. Cook*, Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997), and this Court has not overruled *Alsteen* or *Cofield*. Review is warranted because the court of appeals' decision on this issue conflicts with this Court's controlling opinion in *Alsteen*. Wis. Stat. 809.62(1r)(d).

Further, given the enactment of Wis. Stat. § 904.04(2)(b)1 and the application of greater latitude to cases involving third degree sexual assaults, there is a need for this Court to develop and clarify the law of whether a prior non-consensual sexual act with a different individual is relevant under Wis. Stat. § 904.01 to prove a complainant's lack of consent. This is a question of law likely to recur unless resolved by this Court. Review is therefore also warranted under Wis. Stat. 809.62(1r)(c)(3).

III. This Court should accept review to determine whether the circuit court properly exercised its discretion in denying the State's motion to admit other acts evidence.

This issue does not, on its own, independently merit review by this Court. However, for completeness, Mr. Seaton raises this issue in this

petition to ensure that this issue is addressed by the Court and the parties if the Court grants review on Issues I and/or II.

The decision to admit or exclude evidence is left to the discretion of the trial court, which an appellate court upholds unless there was an erroneous exercise of discretion. *State v. Mayo*, 2007 WI 78, ¶31, 301 Wis. 2d 642, 734 N.W.2d 115 (citation omitted). The question is whether “the circuit court applied the proper legal standard to the relevant facts and reached a reasonable discretionary decision.” *State v. Johnson*, 2021 WI 61, ¶34, 397 Wis. 2d 633, 961 N.W.2d 18 (citation omitted). “The circuit court’s decision will be upheld unless it can be said that no reasonable judge, acting on the same facts and underlying law, could reach the same conclusion.” *State v. Payano*, 2009 WI 86, ¶51, 320 Wis. 2d 348, 768 N.W.2d 832 (internal quotation and citation omitted).

Here, the circuit court applied the proper legal standard, including Wis. Stat. §904.04(2)(a) and the greater latitude rule of §904.04(2)(b)1. (46:19-21; App. 32-33) The court also applied the proper legal framework for determining the admissibility of other acts evidence -- the three-pronged *Sullivan* analysis. (46:24, 26-27; App. 37, 39-40)

The court also examined the relevant facts of the charged offense and the other act and analyzed the similarities and differences between them. (46:10-12, 21-27; App. 23-25, 33-39) It noted similarities: the female’s ages, but found that Mr. Seaton was their peer, they both knew him from attending the same high school, they both had consumed alcohol, and claimed that Mr. Seaton forced sexual intercourse with them without their consent and that he did not stop when they asked him to. (46:21-24; App. 33-36) The court also found several differences between the two individual’s accusations: the type of relationship each had with Mr. Seaton; the circumstances of how each of

them came into contact with him, the location of the alleged assaults, and the force Mr. Seaton allegedly used. (46:22-24, 26; App. 34-36, 39)

The court concluded that the State's proffered purposes for the prior allegations to show Mr. Seaton's identity, plan, or modus operandi were not permissible purposes under the first *Sullivan* prong. (46:24-27; App. 37-40) It also found this evidence could not be properly offered to bolster the complainant's credibility without its connection to another permissible purpose. (46:24, 26-27 App. 37, 39-40) The court concluded that, even with greater latitude, because the prior act was not "offered for a permissible purpose" it was denying the State's motion to admit the other act evidence. (46:27; App. 40)

The court was within its discretion in so holding. The circuit court's evidentiary decision was a quintessential judgment call that appellate courts rely on circuit courts to make every day. *See Johnson*, 397 Wis. 2d 633, ¶36. Its decision excluding the other acts evidence was not a decision that no reasonable judge could make.

CONCLUSION

Mr. Seaton respectfully requests that this Court grant review, reverse the decision of the Court of Appeals, affirm the circuit court's denial of the motion to admit other acts evidence, and remand the case to the circuit court.

Dated this 6th day of December, 2024.

Respectfully submitted,

Electronically signed by Melinda A. Swartz

MELINDA A. SWARTZ
State Bar No. 1001536

Law Office of Melinda Swartz LLC
5215 North Ironwood Road, Suite 216A
Milwaukee, WI 53217
Telephone: (414) 270-0660
Email: melinda@mswartzlegal.com

Attorney for Defendant-Respondent-Petitioner

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in s. 809.19(8)(b), (bm) and 809.62(4). The length of this petition is 3,946 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this petition 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 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 6th day of December, 2024.

Signed:

Electronically signed by Melinda A. Swartz

MELINDA A. SWARTZ
State Bar No. 1001536

Law Office of Melinda Swartz LLC
5215 North Ironwood Road, Suite 216A
Milwaukee, WI 53217
Telephone: (414) 270-0660
Email: melinda@mswartzlegal.com

Attorney for Defendant-Respondent-
Petitioner