State of Wisconsin
Court of Appeals
District I
Appeal No. 2007AP002794 CR

State of Wisconsin,

Plaintiff-Respondent,

v.

Corey Young,

Defendant-Appellant.

Appeal from a sentence entered in the Milwaukee County Circuit Court, the Honorable William Brash, presiding

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Defendant-Appellant's Brief

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Table of Authority

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Statement on Oral Argument and Publication

One issue presented by this appeal presents a novel argument concerning the "clearly erroneous" standard of appellate review. Therefore, the appellant recommends oral argument and publication.

Statement of the Issues

I. Whether, at the hearing on Young's motion to suppress his statement to police,. the trial court's finding of fact that Young never invoked his right to counsel was clearly erroneous where the trial judge placed no reasons on the record as to why he found the police more credible on this point.

Answered by the trial court: No.

II. Whether the trial court abused its sentencing discretion by failing to establish a nexus between the factors considered and the sentence imposed.

Answered by the trial court: No.

Summary of Argument

I. Motion to suppress statement. Young filed a motion to suppress his statement on the grounds that he invoked his right to counsel and the police detectives disregarded his request. The trial court conducted a hearing in to the motion. At the hearing the detectives testified that Young never requested a lawyer. On the other hand, Young also testified at the hearing and he told the court that during the first two interviews he repeatedly requested an attorney and that the detectives just ignored him. Although the new law had not yet gone into effect requiring the interrogation to be

recorded it is significant that the police deliberately did not record the interrogation.

The trial court denied Young's motion. The judge simply said that he found the detectives to be more credible. Although the standard of appellate review on a factual question is the lofty "clearly erroneous" standard, this ought not mean that the judge's "finding of fact" on credibility is unassailable on appeal. The judge set forth no reasons on the record why he chose to believe the detectives as opposed to Young. Just like in the exercise of sentencing discretion, where the Supreme Court has recently required the trial courts to create on the record a nexus establishing why the sentencing factors considered by the court require the sentence that was imposed, the clearly erroneous standard ought to at least require the judge to place on the record the reasons why he found certain evidence more credible. Otherwise, appellate review is meaningless.

II. Abuse of sentencing discretion. Young reached a plea agreement whereby he pleaded guilty to first degree intentional homicide in exchange for the State recommending that Young be eligible for supervised release after forty years. The court made Young eligible for supervision release but not for fifty years. The court never explained why the sentencing factors that were considered required a period of fifty years of ineligibility for supervised release as opposed to a period of forty years. It is difficult to imagine why the extra tens years is necessary. On the other hand, there are many reasons why a period of forty years makes much more sense- not the least of which is the fact that Young is statistically likely to live forty more years but he is statistically unlikely to live fifty more years.

Statement of the Case

I. Procedural Background

The defendant-appellant, Corey Young ("Young") was charged with first degree intentional homicide, armed robbery, and felon in possession of a firearm arising out of the robbery of Kevin Bohannon. (R:2) When Young was arrested he was interviewed by police detectives four times and he eventually confessed to shooting Bohannon. Young filed a motion to suppress his statement on the grounds that he was intoxicated by cocaine and ecstasy and that he invoked his right to counsel but was not afforded an opportunity to confer with an attorney.

After a hearing on the motion the court denied the motion to suppress finding that the detectives were more credible in their testimony that Young was not intoxicated and that he never requested counsel (R:31-113).

Shortly thereafter Young reached a plea agreement whereby he would plead guilty to first degree intentional homicide and the state would dismiss and read-in counts two and three and the state would recommend eligibility for extended supervision after forty years. Young entered his guilty plea and the colloquy with the court was not defective. At sentencing the court sentenced Young to life in prison and he is not elibigle for extended supervision for fifty years.

Concerning Young's eligibility for extended supervision the court said:

> Court has to take a look at a lot of factors. The State has recommended, basically, or asked the Court to consider the

> imposition or making him eligible after what's tantamount to forty years. Counsel's asked for thirty years. But after considering all the factors that the court is required to consider, I don't believe that either of those is appropriate under the circumstances. Again, I'm not discrediting the fact that there has been an acceptance of responsibility. I'm also not discrediting the fact or not considering the fact that he spared the family a trial with regards to this matter and potential issues that occur during the court of those proceedings.
>
> And because of that, I will make him eligible for consideration, but it will not be before July 6th, 2056 at which point in time he would then be eligible for consideration for release. So it's basically, fifty years before he's eligible for that consideration.

(R:33-31).

Young timely filed a notice of intent to pursue postconviction relief. He then filed a motion seeking modification of his sentence on the grounds that the trial court abused its sentencing discretion by failing to set forth a nexus on the record between the factors considered and the sentence ultimately imposed. (R:24).

On November 15, 2007 the trial court denied Young's motion without hearing. (R:26)

II. Factual Background

A. The criminal complaint

The criminal complaint alleges that on July 7, 2006 Milwaukee Police were sent to the Mitchell Park Domes where they found Kevin Bohannon dead. (R:2-2) Bohannon had apparently died from a gunshot wound as part of a robbery.

The police investigated the circumstances of the crime and were eventually led to the appellant, Corey Young. On September

22, 2006 Young was arrested and police questioned him concerning his involvement in Bohannon's death. Young told police that he and two friends, Alfonzo Washington and John Luckett, were out together and decided to rob someone. After driving around the area for a time they came upon Bohannon near the Domes. Washington got out of the car, ran up to Bohannon, and then struck Bohannon in the face knocking him to the ground. Young, who was armed with a pistol, approached the scene. Bohannon attempted to fight off Washington but, when he saw Young with the gun, he stopped. The robbers stood Bohannon up and forced him to turn over his MP3 player. Young then pointed the pistol at Bohannon and asked him what was in his pockets. Bohannon did not immediately respond so Young reached into Bohannon's pocket. As Young did so Bohannon grabbed Young's arm. At that point Young shot Bohannon in the stomach. (R:2)

B. The hearing on Young's motion to suppress his statement.

Detective James Hensley was one of the police officers who questioned Young beginning in the early morning hours of September 22, 2006. Hensley testified that he asked Young whether he (Young) was under the influence of drugs or alcohol at the time and Young said that he was not. (R:31-10) Hensley told the court that he did not think that Young looked like he was under the influence of drugs or alcohol. (R:31-14) Likewise, Hensley testified that Young did not appear tired, Young made no requests of the detectives, and that Young never asked for the assistance of a lawyer. (R:31-13)

Hensley questioned Young for seven and one-half hours. (R:

31-11) At the conclusion of the questioning, though, Young refused to sign the written summary prepared by the detectives. (R:31-18)

This interview ended mid-morning and Young was taken back to his cell. During the day he was fed and he was given an opportunity to sleep. (R:31-22).

At 8:50 p.m., though, a new set of detectives retrieved Young from his cell and began questioning him again. (R:31-23). This second "interview" continued until 5:25 a.m. the following morning, September 23, 2006. (R:31-31) The detectives created another written summary and this time Young signed it. (R:31-32)

Again, the detectives testified that Young did not appear to be under the influence of alcohol or drugs and that he was cooperative throughout the interview. (R:31-35)

Once again, Young was taken back to his cell during the day but, for a third time, Young was questioned by yet another set of detectives beginning at 9:21 p.m. on September 23, 2006. (R:31-43) This session included taking Young for a ride in a squad car where he pointed out various locations related to the Bohannon homicide as well as location related to other robberies. This third interview continued until 4:03 a.m. on September 24, 2006. (R:31-51)

Young testified that he was arrested approximately one hour prior to the first interview and that at the time of his arrest he was under the influence of marijuana and alcohol. (R:31-64) Young said that he had been smoking and drinking all day. *Id.* Young also told the court that he had taken ecstasy the day before his arrest and that he had used cocaine earlier on the day of his arrest. (R:31-65) Young testified that at the time of the police questioning, "I was intoxicated. I was high off marijuana, and because at the time I was like-- I was kind of confused like, and I didn't really understand what

was going on." (R:31-66).

Significantly, Young testified that at the start of the first interview he asked for a lawyer and, "numerous times throughout the interview, I asked for a lawyer, and I wasn't . . .. they really didn't pay no attention to me." (R:31-67)

The trial court denied Young's motion to suppress. In its findings, though, the court scarcely touched on the principle issue at the hearing: whether Young asserted his right to counsel. The judge said:

> With regards to, obviously, the first and second interviews, there's also an issue with regards to his request for legal counsel or representation during the course of these interviews, and Mr. Young has indicated that both during the first and the second, he had asked for a lawyer on multiple occasions that-- and the detectives, conversely, indicated that at no time did he ask for a lawyer or ever ask to suspend the proceedings. . . . . Part of that, obviously, boils down to a credibility issue, ultimately as to everyone's respective positions. As noted, Mr. Young, and I don't think there's any dispute in that regard, indicated or may have-- detectives recall him making the representation that he wasn't impaired. I think Mr. Young indicated he may have said that, but he was, in fact, impaired at the time. The other issue bing one of his request for legal counsel and, obviously, as to first interview, based upon his impairment, whether or not he understood his rights.
>
> In looking at all that and in making the assessment, I do find the testimony of the detectives, specifically, with regards to the first and second interviews . . . to be credible both with regards to those statements attributable to Mr. Young and their observations of Mr. You at the time. There was also an indication as to his physical condition, the fact that he didn't make any representation, he again indicated that he did.

> So, as noted, there is an issue with regards to credibility, and I find the officers who testified today to be more credible than Mr. Young with regards to these issues.

(R:31-110 to 111)

Argument

I. The trial court's finding of fact that Young did not invoke his right to counsel is clearly erroneous.

Young filed a motion to suppress his statement on the grounds that he invoked his right to counsel and the police detectives disregarded his request. The trial court conducted a hearing in to the motion. At the hearing the detectives testified that Young never requested a lawyer. On the other hand, Young also testified at the hearing and he told the court that during the first two interviews he repeatedly requested an attorney and that the detectives just ignored him. Although the new law had not yet gone into effect requiring the interrogation to be recorded it is significant that the police deliberately did not record the interrogation.

The trial court denied Young's motion. The judge simply said that he found the detectives to be more credible. Although the standard of appellate review on a factual question is the lofty "clearly erroneous" standard, this ought not mean that the judge's "finding of fact" on credibility is unassailable on appeal. The judge set forth no reasons on the record why he chose to believe the detectives as opposed to Young. Just like in the exercise of sentencing discretion, where the Supreme Court has recently required the trial courts to create on the record a nexus establishing why the

sentencing factors considered by the court require the sentence that was imposed, the clearly erroneous standard ought to at least require the judge to place on the record the reasons why he found certain evidence more credible. Otherwise, appellate review is meaningless.

A. Standard of Appellate Review

In reviewing a trial court's order denying a motion to suppress a custodial statement, the appellate standard of review is mixed. *State v. Turner*, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987). The trial court's findings of historical or evidentiary fact will not be disturbed on appeal unless they are clearly erroneous. *Id*. However, questions of law and constitutional fact are reviewed independently. *Id.* at 344.

A trial court's findings of fact are clearly erroneous when the finding is against the great weight and clear preponderance of the evidence. *Wassenaar v. Panos*, 111 Wis. 2d 518, 525, 331 N.W.2d 357 (1983). Under the clearly erroneous standard, "even though the evidence would permit a contrary finding, findings of fact will be affirmed on appeal as long as the evidence would permit a reasonable person to make the same finding." *Reusch v. Roob*, 2000 WI App 76 (Wis. Ct. App. 2000)

The appellate cases are silent as to the *form* that the trial court's findings of fact must take. That is, no appellate case that the undersigned has been able to locate has held that the trial court is required to place on the record its reasons for finding one fact as opposed to another. However, the appellate courts have held in other contexts that meaningful appellate review requires that the trial court set forth on the record its reasons for findings and conclusions that it makes- even where the issue is a matter of discretion.

Otherwise, meaningful appellate review is impossible.

B. Where the defendant invoked his right to counsel all questioning must stop.

In *Edwards v. Arizona,* 451 U.S. 477, 484-85, 68 L. Ed. 2d 378, 101 S. Ct. 1880 (1981), the Supreme Court established a bright-line rule requiring law enforcement officers to immediately stop questioning once a suspect has invoked his or her right to counsel. In *Davis v. United States*, 512 U.S. 452, 129 L. Ed. 2d 362, 114 S. Ct. 2350 (1994), the Supreme Court resolved whether ambiguous statements or equivocal requests are sufficient to invoke the right to counsel and to obligate officials to cease questioning and clarify an equivocal request. *See State v. Long*, 190 Wis. 2d 387, 394, 526 N.W.2d 826, 829 (Ct. App. 1994). The Court held that the request for counsel must be sufficiently clear so that "a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, *Edwards* does not require that the officers stop questioning the suspect." *Davis*, 114 S. Ct. at 2355.

C. The trial court's findings of fact on the issue of whether Young invoked his right to counsel are defective because the trial court gave no reason for believing the testimony of the officers.

The primary thrust of Young's motion to suppress his statement was his contention that he repeatedly invoked his right to counsel. In denying the motion, though, the trial court barely touched on that contention. On this point, the trial court recognized that Young testified that he invoked his right to counsel but that the

detectives testified that Young did not; however, the judge's analysis was as follows: "So, as noted, there is an issue with regards to credibility, and I find the officers who testified today to be more credible than Mr. Young with regards to these issues." (R:31-110 to 111)

Under a strict application of the "clearly erroneous" standard as it present exists Young probably loses on this issue. A review of the record of the motion hearing demonstrates that each of the detectives testified that Young never invoked his right to counsel.

However, if all the appellate court did was to review the record in that manner, then there has been, in effect, no meaningful appellate review at all.

The trial judge said that he found the detectives to be more credible than Young. What is left unexplained, though, is *why.*

The question here, then, is whether the trial court's findings of fact ought to be subject to the clearly erroneous standard where the judge offers no explanation for believing one fact over some other competing fact.

In another context, the appellate courts have recently held that even where a determination is discretionary the trial court must at least state on the record its reasons for proceeding as it did. For many years the trial court's sentencing discretion was reviewed for "abuse of discretion." Trial judges eventually took this to mean that the court could sentence the defendant to almost anything within the statutory range and the sentence would be appeal-proof.

In a concurring opinion in *State v. Taylor*, 2006 WI 22 ¶18 (Wis. 2006), Justice Bradley wrote, "Merely uttering the facts involved, invoking sentencing factors, and pronouncing a sentence is not a sufficient demonstration of the proper exercise of discretion."

Taylor, 2006 WI 22, ¶54 (Wis. 2006). Rather, as the court explained in *State v. Gallion*, 270 Wis. 2d 535, 678 N.W.2d 197 (2004); "[W]e require that the court, by reference to the relevant facts and factors, explain how the sentence's component parts promote the sentencing objectives. By stating this linkage on the record, courts will produce sentences that can be more easily reviewed for a proper exercise of discretion." *Gallion*, 2004 WI 42, ¶46 (Wis. 2004)

The same is true with regard to the "clearly erroneous" standard. Unless the trial judge offers some explanation as to *why* he believes one witness over another the review of the appellate court is nothing more than a rubber-stamp process.

This is particularly true when it comes to motions to suppress statements in criminal cases. Will a trial judge *ever* believe a defendant over a police detective about what happened behind closed doors during a police interrogation?

The Wisconsin Legislature apparently does not think so. Sec. 968.073, Stats[1]., was recently created. That section provides that, "(2) It is the policy of this state to make an audio or audio and visual recording of a custodial interrogation of a person suspected of committing a felony unless a condition under s. 972.115 (2) (a) 1. to 6. applies or good cause is shown for not making an audio or audio and visual recording of the interrogation." If the police fail to make such a recording the fact-finder is now instructed that the, "jury may consider the absence of an audio or audio and visual recording of the interrogation in evaluating the evidence relating to the interrogation and the statement in the case …." Sec. 972.115(2)(a), Stats.[2]

1 This statute did not go into effect until January 1, 2007 and, therefore, it did not appeal on the date of Young's interrogation.

2 Again, this statute was no in effect at the time of Young's motion hearing. It is

Thus, there ought to be legitimate concern in the courts about whether, prior to the time when interrogations were recorded, police detectives honored a defendant's request for counsel. It is not too much to ask for the trial judge to at least set forth on the record his *reasons* for believing the police detectives as opposed to the defendant. In this way the appellate courts will have some objective basis to determine whether or not the trial court's findings are clearly erroneous.

Here, the judge set forth no such reasons. Thus, the trial court's findings of fact are clearly erroneous because there is no objective way for the Court of Appeals to review the findings. The trial judge just flatly said that he believed the police officers. The judge offered no reasons why he chose to believe the police offers.

II. The trial court abused its discretion in sentencing Young.

Young reached a plea agreement whereby he pleaded guilty to first degree intentional homicide in exchange for the State recommending that Young be eligible for supervised release after forty years. The court made Young eligible for supervision release but not for fifty years. The court never explained why the sentencing factors that were considered required a period of fifty years of ineligibility for supervised release as opposed to a period of forty years. It is difficult to imagine why the extra ten years is necessary. On the other hand, there are many reasons why a period of forty years makes much more sense- not the least of which

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persuasive, though, concerning the legislature's concern about what happens behind closed doors during a police interrogation.

is the fact that Young is statistically likely to live forty more years but he is statistically unlikely to live fifty more years.

A. Standard of Appellate Review

The standard of review when reviewing a criminal sentence is whether or not the trial court erroneously exercised its discretion. *State v. Wickstrom*, 118 Wis. 2d 339, 354, 348 N.W.2d 183 (Ct. App. 1984). There is a strong policy against an appellate court interfering with a trial court's sentencing determination and, indeed, an appellate court must presume that the trial court acted reasonably. *State v. Thompson*, 146 Wis. 2d 554, 565, 431 N.W.2d 716 (Ct. App. 1988).

B. The court failed to create a "nexus" on the record establishing why the sentencing factors considered by the court required the sentence that was imposed.

Recently, in, *State v. Taylor*, 2006 WI 22 ¶18 (Wis. 2006) the Wisconsin Supreme Court reaffirmed the traditional sentencing factors but, in the light of "Truth in Sentencing", emphasized the need for trial courts to do more than simply recite the facts, invoke the sentencing factors, and to then decide the sentence. Rather, the trial court must *explain* what factors are being considered and *why* those factors require the sentence being imposed (i.e. to provide the "linkage" between the sentencing factors and the sentence imposed). The court wrote:

> The standards governing appellate review of an imposed sentence are well settled. A circuit court exercises its discretion at sentencing, and appellate review is limited to determining if the court's discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, P17, 270 Wis. 2d 535, 678 N.W.2d 197; see also *McCleary v. State*, 49 Wis.

> 2d 263, 277, 182 N.W.2d 512 (1971) ("It is thus clear that sentencing is a discretionary judicial act and is reviewable by this court in the same manner that all discretionary acts are to be reviewed."). "Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning. This process must depend on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards." Id. at 277.
>
> "The sentencing decisions of the circuit court are generally afforded a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant." *State v. Borrell*, 167 Wis. 2d 749, 781-82, 482 N.W.2d 883 (1992) (citing *State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984)). "Therefore, the convicted defendant must show some unreasonable or unjustified basis in the record for the sentence imposed." *Borrell*, 167 Wis. 2d at 782 (citing *Harris*, 119 Wis. 2d at 622-23). "Appellate judges should not substitute their preference for a sentence merely because, had they been in the trial judge's position, they would have meted out a different sentence." *McCleary*, 49 Wis. 2d at 281.
>
> Furthermore, "[a] trial judge clearly has discretion in determining the length of a sentence within the permissible range set by statute." *Hanson v. State*, 48 Wis. 2d 203, 207, 179 N.W.2d 909 (1970). "An abuse of this discretion will be found only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." (internal citations omitted)

In sentencing Young the court took care to outline all of the factors that the court considered, however, having invoked the sentencing factors, the court never explained *why* the sentence imposed was necessary. Rather, the court merely said, "But after considering all the factors that the court is required to consider, I don't believe that either of those is appropriate under the circumstances." The court then made Young ineligible for supervised release for fifty years.

Again, in a concurring opinion in *Taylor***,** Justice Bradley wrote, "Merely uttering the facts involved, invoking sentencing factors, and pronouncing a sentence is not a sufficient demonstration of the proper exercise of discretion." *Taylor,* 2006 WI 22, ¶54 (Wis. 2006). Rather, as

the court explained in *Gallion,* "[W]e require that the court, by reference to the relevant facts and factors, explain how the sentence's component parts promote the sentencing objectives. By stating this linkage on the record, courts will produce sentences that can be more easily reviewed for a proper exercise of discretion." *Gallion***,** 2004 WI 42, ¶46 (Wis. 2004)

Here, this record contains no explanation from the judge as to why the factors that were considered required that Young not be eligible for supervise release for fifty years (as opposed to forty or thirty years). Thus, the record does not demonstrate that proper sentencing discretion was exercised.

It is difficult to imagine why the sentencing factors that the court considered would require the extra ten years of ineligibility for supervised release. As the court noted, Young was twenty-nine years-old at the time of sentencing. Thus, in thirty years he would be fifty-nine years-old; in forty years he would be sixty-nine years-old; but in fifty years he will be seventy-nine years-old. What is it about those ten years between the ages of sixty-nine and seventy-nine that makes the difference? One difference that comes to mind is that at the age of sixty-nine the actuarial charts suggest that Young may still have several years of life-expectancy remaining. However, the statistics suggest that there is a strong probability that Young will not make it to his seventy-ninth birthday.

Moreover, the court did not even address the fact that we are only considering *eligibility* for supervised release. If, for example, at the age of sixty-nine Young were still in robust health and was unrepentant and antisocial presumably the court would not grant him supervised release.

There simply does not seem to be any good reason to make Young eligible for supervised release after fifty years but not after forty years. The court's sentencing comments shed no light on the judge's reasoning.

Finally, one wonders whether the trial judge actually did have any reasons in mind why the factors considered required the sentence that

was imposed. Young filed a postconviction motion seeking resentencing. The trial court not only refused to grant Young resentencing but the memorandum decision fails to offer an additional explanation regarding the court's sentence.

The memorandum decision merely reads:

> The court based its determination on the totality of circumstances presented- the absolute egregiousness of the offense (execution-style murder for a pair of shoes, a baseball hat, a little money, and an MP3 player), the defendant's desire to shoot someone and his subsequent comments about what he had done, his prior record, the comments of the victim's family and how the defendant's action affected this family, and the absolute need to protect the community from the defendant. The court perceives no erroneous exercise of discretion and no reason to modify the sentence imposed by altering the eligibility date for extended supervision.

(R:26). The judge reiterated the factors that were considered but still offered no explanation as to why those factors required that Young not be eligible for extended supervision- other than to invoke the talismanic "totality of the circumstances." In other words, the trial judge, at the very least, ought to be required to explain, for example, why the "absolute need to protect the public" is better served by making Young ineligible for supervised release for fifty years as opposed to some lesser period. On this point it is important to emphasize that we are only discussing *eligibility* for supervised release- not supervised release itself. If, after a period of ineligibility, the court determined that Young was still dangerous then he should not be granted extended supervision.

For these reasons the trial court abused its sentencing discretion.

Conclusion

It is respectfully requested that the court reverse the trial court's order denying Young's motion to suppress his statement because the court's finding of fact that Young did not invoke his right to counsel is clearly erroneous. Young should then be permitted to withdraw his guilty plea.

In the alternative, the court of appeals should find that the trial court abused its sentencing discretion, vacate Young's sentence, and remand the matter for resentencing with instructions that the trial court must establish on the record a nexus between the sentencing factors considered and the sentence imposed by the court.

Dated at Milwaukee, Wisconsin this ____ day of _____, 2008.

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Certification

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of the brief is 5782 words.

This brief was prepared using *Open Office* word processing software. The length of the brief was obtained by use of the Word Count function of the software

Dated this _____ day of _____, 2008:

_____

Jeffrey W. Jensen

State of Wisconsin
Court of Appeals
District I
Appeal No.

State of Wisconsin,

Plaintiff-Respondent,

v.

,

Defendant-Appellant.

Appendix Certification

A. Record on Appeal

B. Excerpt of court's bench decision on motion to suppress

C. Excerpt of court's sentencing remarks

D. Court's memorandum decision on postconviction motion

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 s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) 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

Dated at Milwaukee, Wisconsin, this _____ day of _____, 2008

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