State of Wisconsin
Court of Appeals
District 4
Appeal No. 2012AP001065 - CR

State of Wisconsin,

Plaintiff-Respondent,

v.

William T. McCoy, Jr.

Defendant-Appellant.

On appeal from a judgment of the Dane County Circuit Court, The Honorable Diane Sorensen, presiding

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Defendant-Appellant's Brief and Appendix

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Statement on Oral Argument and Publication

The issues presented by this appeal are controlled by well-settled law. Therefore, the appellant does not recommend either oral argument or publication.

Statement of the Issues

I. Whether the evidence was sufficient as a matter of law to support the defendant's conviction for first degree intentional homicide where there was no evidence of the circumstances that existed at the time the fatal shot was fired (i.e. no facts presented from which the jury might have inferred that McCoy acted with the intent to kill).

Answered by the trial court: Yes.

II. Whether the defendant was denied his constitutional right to a public trial where there was no evidence in the record that the Dane County Courthouse was kept open past customary business hours, and: (A) the transcript indicates that the jury instructions were not completed until 5:45 p.m.; (B) the jury deliberated throughout the night-- and there were various jury questions discussed on the record-- and was not released until approximately 6:10 a.m., and ordered to return at 2:00 p.m.; and, finally, the verdict was read the following day at 7:17 p.m.

Answered by the trial court: Not addressed by the trial court.[1]

Summary of the Argument

I. The evidence was insufficient to prove intent to kill. There was very little evidence that it was McCoy who fired the fatal shot that struck Bowdry in the chest. There was probably enough, though, to permit the jury to conclude that the pistol was in McCoy's hand at the time it fired. What is missing, though, is any direct evidence that McCoy acted with the intent to kill Bowdry. Moreover, there was no circumstantial evidence that would support an inference that McCoy acted with the intent to kill. That is, there was no evidence whatsoever as to what McCoy was doing at the instant the shot was fired. Thus, the jury could not reasonably conclude that McCoy deliberately and volitionally pulled the trigger. Similarly, there was no evidence that, at the instant the shot was fired, McCoy was aiming the weapon at Bowdry's chest. Although McCoy had a motive to harm Bowdry, he had no motive to kill him. Rather, because the police were on the way to the scene, McCoy had a reason to refrain from killing Bowdry. Finally, after the shot was fired, McCoy did not attempt to conceal the body or to flee from the scene. He did nothing that would permit an inference of consciousness of guilt. For these

[1] Postconviction counsel felt compelled to refrain from raising this issue in a postconviction motion since a demand for a new trial waives any double jeopardy protection.

reasons, the evidence was insufficient as a matter of law to support the jury's verdict finding McCoy guilty of first degree intentional homicide.

II. McCoy was denied his right to a public trial. The normal hours of operation for the Dane County Courthouse are from 7:45 a.m. until 4:30 p.m. Here, according to the transcript (and the docket entries) the jury instructions and closing arguments occurred after 4:30 p.m. on April 2, 2003. Throughout the night, the court handled numerous jury questions before releasing the jury at 6:10 a.m. The jury verdict was received in court after 7:00 p.m. on April 3, 2003. Plainly, critical parts of McCoy's trial occurred during times when the Dane County Courthouse was closed for business. The record contains no indication that the court made arrangements to keep the courthouse open beyond the normal business hours. More significantly, the record contains no indication that McCoy ever waived his fundamental right to a public trial. The failure to conduct a public trial is structural error and, therefore, it requires automatic reversal and a new trial.

Statement of the Case

I. Procedural History

On April 18, 2006, the defendant-appellant, William McCoy, was charged with first degree intentional homicide and with being a felon in possession of a firearm. The charges arose out of an incident that occurred in Madison on July 25, 2003. McCoy entered not guilty pleas to both counts.

The case was tried to a jury beginning on March 26, 2007.

Prior to the start of jury instructions and closing arguments, there was a brief discussion about the judge's intention to keep the jury deliberating after business hours. (R:66-158) The judge indicated that she intended to keep the jury deliberating until 10:30 or 11:00 p.m., but the judge did not indicate that any provisions were being made to keep the courthouse itself open after hours. (R:66-158)

Following jury instructions and closing arguments, the jury retired to deliberate at 5:45 p.m. (R:66-311) The jury deliberated throughout the night, and the court addressed on the record a number of jury questions. For example, at 7:55 p.m., the jury asked for all of the police reports. (R:66-316). At 10:00 p.m., the jury asked whether any of the inmates who testified would have had access to the internet (R:66-317). At 11:25 p.m., the jury indicated that it was "stuck" (R:66-320). The judge declined to read the so-called *Allen* instruction. (R:66-320) At 4:35 a.m. on April 7th (i.e. the following morning), the jury again indicated that they could not reach a unanimous agreement on count one (first degree intentional homicide) (R:66-335) In addressing the situation, the

prosecutor told the court, “It’s 4:30 at night and some of these people have been up for 24 hours, and I think we have a pregnant woman on the jury as well.” (R:66-336) The judge indicated that she would bring the jury back into the courtroom, and comment to them that they have not indicated that they are exhausted, and then the judge would give the *Allen* instruction. (R:66-339) At 4:56 a.m., the jury had another question. (R:66-343) The jury asked to see the pictures that were introduced into evidence.

At approximately 6:00 a.m. the bailiff reported to the court that the pregnant lady is not feeling well at all. (R:66-352) At 6:10 a.m. on April 3, 2007. the court brought the jury into the courtroom and read an excerpt of the transcript of witness testimony to them. (R:66-382) The jury was then released.

The jury returned at 2:55 p.m. that day. The judge conducted a personal colloquy with McCoy about releasing the jurors to go home to sleep. McCoy acknowledged that he concurred in the practice. (R:66-379)

At 7:17 p.m., the jury returned with its verdict finding McCoy guilty of both counts. (R:66-384) The jury was polled, and all affirmed the verdict.

The court sentenced McCoy to life in prison.

There was not a timely postconviction motion, nor an appeal of McCoy’s conviction; however, upon McCoy’s *pro se* motion, the court reinstated McCoy’s postconviction/appeal rights under Sec. 809.30, Stats. McCoy timely filed a notice of

appeal.

II. Factual Background

On July 25, 2003, the Madison police were dispatched to a "shots fired" complaint on Fish Hatchery Road. (R:60-229) When officers arrived, they found a number of people in the front yard. (R:60-231) The officers immediately recognized Jerry McCoy and the appellant, William McCoy, as two of the persons. (R:60-234) William McCoy (hereinafter "McCoy", Jerry McCoy will be referred to as "Jerry") indicated that he had been robbed at gunpoint inside of the apartment, that shots were fired, but that no one had been hurt. (R:60-237) When the officers entered the apartment, though, they found a man lying unconscious on the threshold of the bathroom in a pool of blood. (R:60-244) The unconscious man was the deceased, Adrian Bowdry.

The investigation revealed that, in sum, Bowdry and another man, Robinson, went to Jerry McCoy's apartment with the intention of robbing him. There were two other men assisting in the robbery, one armed with a rifle, each of whom stood outside of the apartment building during the robbery. Bowdry knocked on the apartment door. William McCoy, who along with several others was visiting, answered the door and he admitted the two men into the apartment. At the time, Jerry McCoy was asleep in the bedroom. After a short exchange of words, the robbers drew their weapons, and indicated that this

was a “stick up.” Marvin Artley, who was among those in apartment, immediately ran to the bedroom. Bowdry pursued him, and Bowdry began kicking the bedroom door. Artley opened the door slightly and shot Bowdry in the “upper torso” (R:62-221), dropping him to the floor. (R:62-191) Meanwhile, Jerry McCoy had jumped out of the bedroom window. Upon seeing Bowdry on the floor, the other robber, Robinson, grabbed William McCoy, took $1000 out of McCoy’s pocket, and then used McCoy as a human shield to make his way out of the apartment. When police entered the apartment, they found a .38 revolver resting on the floor. (R:62-160)

Nichol Contreras was also present in the apartment at the time of the robbery. Although she put a pillow over her face, she was able to see William McCoy being robbed. (R:61-163) After the initial shooting she heard “beating sounds” coming from the back of the apartment. (R:61-166) When she took the pillow away from her face she saw McCoy standing near the bedroom holding a revolver close to his shirt. (R:61-167, 168) She never saw McCoy shoot the gun, and she did not hear any shots besides the initial volley. (R:61-169) Contreras’ trial testimony was impeached by a prior inconsistent statement in which she said that after the incident she was in a hotel room with McCoy and others, and McCoy said that Artley shot the robber, and that he (McCoy) then kicked the man and shot him. (R:61-288) According to the statement, McCoy also said that he thought the man was already dead by the time he shot him.

(R:61-184) Jerry McCoy was also present in the hotel room, and he heard William McCoy say that he had shot Bowdry, but that he wanted to blame both shots on Artley because Artley had a valid claim of self-defense. (R:64-85)

William McCoy was interviewed by police following the incident. He admitted that he kicked the man who was on the floor. (R:62-52) During this same interview, McCoy said that Artley struck Bowdry in the head with the pistol. (R:62-70) McCoy admitted that he, too, struck Bowdry in the head with a pistol, and kept hitting him until his teeth fell out. (R:62-79, 80) McCoy denied, though, that he ever shot Bowdry. (R:62-51) McCoy also admitted to Paul Moore, a man with whom he was incarcerated, that he (McCoy) stomped on Bowdry's head. (R:66-60)

Marvin Artley testified that while he was outside of the apartment on the night of the robbery he heard one more shot that sounded like it came from inside the apartment. (R:62-204)

Jerry McCoy, who was also outside, heard his brother, William, tell Artley to stop shooting, but then he heard two or three more shots. (R:64-71) Jerry also heard the muffled sounds of a person being beaten, and then he heard one more shot. (R:64-75)

Danny Williams was part of the plot to rob Jerry McCoy. According to Williams, Bowdry was armed with a .38 revolver, and he identified the pistol found at the scene as Bowdry's weapon. (R:61-45, 46)

The medical examiner, Robert Huntingon, performed an autopsy on Bowdry. Dr. Huntington observed a number of non-gunshot wounds around Bowdry's head, and a gunshot wound to his chest. (R:61-83) There was also a flesh wound, probably caused by a gunshot, to Bowdry's neck. (R:61-87) According to Dr. Huntington, the gunshot wound to Bowdry's chest was the cause of death. (R:61-91) Neither the blunt trauma to the head nor the neck wound were likely to have caused death. (R:61-99)

A bullet was removed from Bowdry's body, and it was compared to the .38 caliber pistol that was found in the apartment. William Newhouse, a firearms and toolmarks examiner, testified that, in his opinion, the bullet removed from Bowdry's body was fired from the .38 caliber pistol that police found on the floor of the apartment. (R:63-183)

An examination of McCoy's teeshirt revealed that Bowdry's blood was present. (R:63-215, 217) Bowdry's blood was also on the .38 caliber pistol. *Id.*

Argument

I. The evidence was insufficient as a matter of law to sustain the jury's verdict convicting McCoy of first degree intentional homicide.

Although there was evidence that McCoy was the one who "shot" Bowdry, there was no direct evidence that McCoy

intended to kill Bowdry. Similarly, there was no circumstantial evidence that would permit an inference that McCoy acted with the intent to kill Bowdry. That is, there was no evidence that the pulling of the trigger was a deliberate and volitional act by McCoy. There was no evidence that McCoy aimed the pistol at Bowdry's chest before he fired. There was no evidence that McCoy had a motive to kill Bowdry (though he clearly had a motive to harm him). And, finally, there was nothing about McCoy's behavior following the incident that would permit an inference of a guilty conscience. McCoy did not attempt to conceal the body, nor did he flee from the scene.

As such, the evidence was insufficient as a matter of law to support the jury's verdict finding McCoy guilty of first degree intentional homicide.

A. Standard of Appellate Review

The standard of appellate review on challenges to the sufficiency of the evidence to support a verdict in a criminal case is well-known. In *State v. Poellinger*, 153 Wis. 2d 493, 501 (Wis. 1990), the Supreme Court held:

> We hold that the standard for reviewing the sufficiency of the evidence to support a conviction is the same in either a direct or circumstantial evidence case. Under that standard, an appellate court may not reverse a conviction unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.

The elements of first degree intentional homicide are well-known. Sec. 940.01, Stats., provides that, "[W]hoever causes the death of another human being with intent to kill that person or another is guilty . . ."

B. There was no direct evidence that McCoy intended to kill Bowdry; and there was no circumstantial evidence that would reasonably permit the jury to infer that McCoy acted with the intent to kill.

There was precious little evidence that it was, in fact, McCoy who fired the shot that hit Bowdry in the chest. Contreras testified that she saw McCoy with the pistol in the area where Bowdry was shot, but she did not see him fire the shot. The people in the yard heard a gunshot from within the apartment when, arguably, it was only McCoy and Bowdry left inside. McCoy never admitted to the police that he shot Bowdry. However, Jerry McCoy did testify that he was present in the hotel room when William said that he had shot Bowdry. (R:64-85) Similarly, Contreras' earlier statement was in agreement that, in the hotel room, William said that he had shot Bowdry.

Under the highly deferential standard of appellate review, this is probably enough enough evidence to permit a reasonable jury to conclude that it was William McCoy who

shot Bowdry.[2] That is, that it was McCoy who was holding the pistol at the instant it fired.

However, even if McCoy was the one who was holding the pistol at the time it discharged and struck Bowdry, this does not permit an inference that McCoy ever formed the intent to kill. There was no evidence of the manner in which the shot was fired; much less was there any direct evidence that McCoy acted with the intent to kill.

Direct proof of intent is rare. *Clark v. State,* 62 Wis. 2d 194, 197, 214 N.W.2d 450, 451 (1974). Intent can, however, be inferred from the circumstances and from *one's acts*. *Johnson v. State,* 85 Wis. 2d 22, 32, 270 N.W.2d 153, 158 (1978). In every appellate case, though, finding that the evidence was sufficient to prove intent to kill, there was at least some evidence of what the defendant was doing at the time death was caused. For example, in *State v. Hoffman*, 106 Wis. 2d 185, 190 (Wis. Ct. App. 1982), the victim died from cyanide poisoning, the defendant stood to benefit from a life-insurance policy, and he attempted to conceal the victim's body. Under those circumstances, the court found the circumstantial evidence sufficient to prove intent to kill. In, *State v. Weeks*, 165 Wis. 2d 200, 210 (Wis. Ct. App. 1991), the defendant fired a shotgun through a wooden door knowing that a woman was standing on the other side of the door, and the Court of

[2] This is particularly true since there was also circumstantial evidence that McCoy shot Bowdry. For example, Contreras saw McCoy wiping a revolver on his shirt, and the State determined that Bowdry's blood was on McCoy's shirt as well as on the .38 revolver that was found in the apartment. The bullet taken from Bowdry's body was fired from that same pistol.

Appeals found that this was sufficient to support the jury's verdict finding the defendant guilty of first degree intentional homicide. In *Cupps v. State*, 120 Wis. 504, 513, 514, 97 N. W. 210 (1904), the Supreme Court wrote, "When it is made to appear in the prosecution of a case like this that the accused fired the shot, *the weapon being aimed at a vital part of the body,* and that death ensued as a natural and probable result, the presumption of fact as to intention to take human life, in the absence of any explanatory circumstance or evidence, makes a *prima facie* case for the prosecution." Again, in *Cupps,* there was evidence that the defendant aimed the weapon at a vital part of the deceased's body. "One is presumed to intend the natural and probable consequences of pointing and discharging a gun at a vital part of another's body." *Smith v. State*, 69 Wis. 2d 297, 304 (Wis. 1975). In *Smith,* there was evidence that the defendant pointed a shotgun at the deceased, and that he fired twice.

Here, because a shot was fired we must assume that McCoy pulled the trigger. There is no evidence, though, that the pulling of the trigger was a volitional and deliberate act.[3] In *Smith*, *supra*, there was evidence that the defendant was aware of the fact that he was pulling the trigger of the shotgun. There was no similar evidence in this case.

There was evidence that Bowdry was shot in the chest. The fact that Bowdry was shot in the chest, though, does not

[3] Given the evidence that McCoy pistol whipped Bowden, it is certainly plausible that the trigger was inadvertantly pulled in the process of doing so.

reasonably permit an inference that McCoy was aiming the weapon at the time it fired. The record is utterly devoid of any evidence of what McCoy was doing at the instant the shot was fired.[4] In other words, there was no evidence in the record that McCoy ever *aimed the weapon* at Bowdry before he fired. It is the aiming of the weapon that permits the inference of intent to kill.

In *Hoffman*, the court noted that the defendant had a motive to kill the deceased because there was a life insurance policy with a death benefit. Here, given the fact that Bowdry had just attempted to pull off a home-invasion robbery, McCoy undeniably had a motive to harm Bowdry. But- unlike Hoffman, who needed the victim to *die* in order to get the death benefit-- McCoy did not necessarily have a motive to kill Bowdry. Arguably, since the police were on the way, McCoy had a motive to *not kill* Bowdry. Moreover, the acting of pistol whipping Bowdry suggests that McCoy did not want to kill the man; rather, he only wanted to hurt him

Finally, there was nothing about McCoy's behavior following the incident that would permit an inference that he had intended to kill Bowdry when the shot was fired. There was no concealing of the body. There was no flight from the scene of the robbery.

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[4] This is, perhaps, an overstatement. The key word is "instant". Although we know that McCoy pistol whipped Bowdry, we do not know exactly what McCoy was doing at the *instant* that the shot was fired.

II. By requiring continuing the trial throughout the night without establishing on the record that arrangements were made to keep the courthouse open during that time, McCoy was denied his constitutional right to a public trial.

The normal hours of operation for the Dane County Courthouse are from 7:45 a.m. until 4:30 p.m. Here, according to the transcript (and the docket entries) the jury instructions and closing arguments occurred after 4:30 p.m. on April 2, 2003. Throughout the night, the court handled numerous jury questions before releasing the jury at 6:10 a.m. The jury verdict was received in court after 7:00 p.m. on April 3, 2003. Plainly, critical parts of McCoy's trial occurred during times when the Dane County Courthouse was closed for business. The record contains no indication that the court made arrangements to keep the courthouse open beyond the normal business hours. More significantly, the record contains no indication that McCoy ever waived his fundamental right to a public trial. The failure to conduct a public trial is structural error and, therefore, it requires automatic reversal and a new trial.

A. Standard of Appellate Review

Whether a defendant's constitutional right to a public trial has been violated is a question of constitutional fact. The

application of constitutional law to historical fact[5] is a question of law which is reviewed without deference to the lower court. *State v. Eason*, 2001 WI 98, P9, 245 Wis. 2d 206, 629 N.W.2d 625.

B. McCoy's right to a public trial was violated when the court conducted proceedings at a time when the Dane County Courthouse was not open for business.

The first step in this process is to determine the historical facts. The transcript of the trial clearly indicates that some trial proceedings, and much of the jury deliberation-- including numerous jury questions-- occurred outside of normal business hours. The record is devoid of any information that the court made special arrangements to keep the Dane County Courthouse open outside of its normal business hours.[6] Thus, the record clearly supports a finding of historical fact that McCoy's trial was conducted during a time when the Dane

[5] Ordinarily, this issue is raised by way of postconviction motion. This is sometimes necessary to create a record of historical fact. Here, though, McCoy did not make such a motion. This is because, in reviewing the record, postconviction counsel determined that McCoy had a meritorious claim as to the sufficiency of the evidence. If the appellate court determines that the evidence is not sufficient to support the jury's verdict, then principles of double jeopardy will prevent a retrial. *See, e.g. State v. Yates*, 234 Wis. 2d 150 (Wis. Ct. App. 2000) A postconviction motion for a new trial, though, waives any double jeopardy protection. *Day v. State*, 76 Wis. 2d 588, 593 (Wis. 1977). Thus if McCoy had raised the public trial issue in a postconviction motion, and if it had been granted, then he would have waived his claim that the evidence was insufficient to support the verdict.

[6] According to the current iteration of the informational web site for the Dane County Courthouse, the normal hours of operation are from 7:45 a.m. until 4:30 p.m. http://www.countyofdane.com/court. Moreover, the courts are permitted to take judicial notice *at any time* of facts that are not subject to reasonable dispute. *See,* 902.01, Stats.

County Courthouse was closed.[7]

In holding that conducting a criminal jury trial during a time when the courthouse is not open for business (i.e. the courthouse is locked) violates the defendant's constitutional right to a public trial, the Court of Appeals explained:

> The right to a public trial is a basic tenet of our judicial system (citation omtted) rooted in "the principle that justice cannot survive behind walls of silence…." (citation omitted) "The importance we as a Nation attach to the public trial is reflected both in its deep roots in the English common law and in its seemingly universal recognition in this country since the earliest times." (citation omitted) Public trials help to prevent perjury, unjust condemnation, and keep the accused's "triers keenly alive to a sense of their responsibility and to the importance of their functions." Id. at 380. Public trials may also encourage unknown witnesses to come forward and further serve to preserve the integrity of the judicial system in the eyes of the public. Id. at 383. In short, the public trial is "'the most effectual safeguard of testimony, and of the decisions depending on it; it is the soul of justice; it ought to be extended to every part of the procedure, and to all causes.'" Id. at 422 (citation omitted).

State v. Vanness, 2007 WI App 195, P8 (Wis. Ct. App. 2007). "If a defendant's right to a public trial is determined to have been violated, the defendant need not show prejudice; the doctrine of harmless error does not apply to structural errors." *State v. Ndina*, 2009 WI 21, P43 (Wis. 2009).

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[7] If the State can make a reasonable claim that it can present evidence that the courthouse was, in fact, kept open during McCoy's trial, then the court should remand this issue to the trial court for a fact-finding hearing.

Where a right is determined to be a fundamental right, the court must "'indulge every reasonable presumption against [its] waiver." *State v. Denson*, 2011 WI 70, P56 (Wis. 2011)

> Since we deem that a criminal defendant's right to testify is a fundamental right, we conclude in line with Anderson and Klessing, that a circuit court should conduct a colloquy with the defendant in order to ensure that the defendant is knowingly and voluntarily waiving his or her right to testify. We have stated that "the decisions whether to waive the right to an appeal, the assistance of counsel, or to be tried by a jury, are so fundamental to the concept of fair and impartial decision making, that their relinquishment must meet the standard set forth in Johnson v. Zerbst, 304 U.S. 458, 82 L. Ed. 1461, 58 S. Ct. 1019 (1938). That is, the waiver must be 'an intentional relinquishment or abandonment of a known right or privilege.

State v. Weed, 2003 WI 85, P40 (Wis. 2003). Where the trial court fails to conduct a colloquy on the record concerning waiver, "The State has the burden of overcoming the presumption of nonwaiver". *State v. Klessig*, 211 Wis. 2d 194, 204 (Wis. 1997).

Here, critical parts of the trial were conducted during a time when the courthouse was closed for business. This included closing arguments and instructions; numerous jury questions; and the return of the jury's verdict. Thus, the proceedings that occurred during the time when the courthouse was closed were not trivial.

Similarly, the fact that McCoy did not object to the procedure does not constitute waiver of this constitutional right. The right to a public trial is a fundamental right. Thus, it is incumbent upon the trial court to create a record that McCoy knowingly and voluntarily waived this important constitutional right. Because the error is structural, it is not subject to the harmless error rule.

Conclusion

For the foregoing reasons, it is respectfully requested that the Court of Appeals find that the evidence was insufficient as a matter of law to support the jury's verdict finding McCoy guilty of first degree intentional homicide; and to then order the trial court to enter a judgment of acquittal.

In the alternative, it is requested that the court order a new trial on the grounds that McCoy was denied his constitutional right to a public trial. In the event that the court determines that there is an insufficient factual basis to rule on the issue, it is requested that the court remand the matter to the trial court for an evidentiary hearing on whether the Dane County Courthouse was kept open after normal business hours on the days of McCoy's trial.

Dated at Milwaukee, Wisconsin, this _____ day of July, 2012.

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Certification as to Length and E-Filing

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 4,443 words.

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

I hereby certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

Dated this _____ day of July, 2012:

_____

Jeffrey W. Jensen

State of Wisconsin
Court of Appeals
District 4
Appeal No. 2012AP001065 - CR

State of Wisconsin,

Plaintiff-Respondent,

v.

William McCoy,

Defendant-Appellant.

Defendant-Appellant's Brief and Appendix

A. Record of Appeal

B. Excerpt of transcript of the court releasing the jury at 6:10 a.m.

C. Jury verdict received at 7:17 p.m. on April 3, 2003

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 the record.

Dated this ____ day of July, 2012.

_____

Jeffrey W. Jensen