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STATE OF WISCONSIN

SUPREME COURT

STATE OF WISCONSIN,
Plaintiff-Respondent,

Appeal No. 2019AP664 CR

T.A.J.,
Appellant,

v.

ALAN S. JOHNSON,
Defendant-Respondent-Petitioner.

Waupaca County Case
No. 17CF56

ON REVIEW OF A DECISION OF THE COURT OF APPEALS, DISTRICT IV, REVERSING AND REMANDING AN ORDER OF THE CIRCUIT COURT IN WAUPACA COUNTY CIRCUIT COURT BRANCH III, THE HONORABLE RAYMOND HUBER PRESIDING

REPLY BRIEF OF DEFENDANT-RESPONDENT-PETITIONER

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ARGUMENT

Alleged victims lack a statutory or constitutional basis to litigate the merits of a *Shiffra-Green* proceeding. The plain language of Wisconsin Stat. § 950.105 does not provide such a right. Similarly, the recent amendment to Wis. Const. art. I, § 9m also does not provide such a right. The defendant-respondent-petitioner submits this reply brief and also relies on the reasoning raised in his brief-in-chief to request that this Court reverse the Court of Appeals' decision.

I. Wis. Stat. § 950.105 does not provide standing to an alleged victim to litigate the merits of a Motion for In Camera Review.

Alleged victims lack a right to litigate the merits of *Shiffra-Green* matters. Alleged victims possess limited standing to assert rights as crime victims specifically enumerated under Wisconsin Statutes or the Wisconsin Constitution. Section 950.150 provides, "[a] crime victim has a right to assert, in a court in the county in which the alleged violation occurred, his or her rights as a crime victim under the statutes or under article I, section 9m, of the Wisconsin Constitution."

The plain meaning of the text of § 950.105 directs

that victim possess limited standing to assert enumerated rights. "Statutory interpretation "begins with the language of the statute." *State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124. A court should rely on "primarily on intrinsic sources of statutory meaning and confines resort to extrinsic sources of legislative intent to cases in which the statutory language is ambiguous." *Id.* at ¶ 43. If the meaning of the statute is plain, a court can stop the inquiry. *Id.* at ¶ 45. "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Id.*

Chapter 950 goes on to provides a lengthy listing of assertable rights. Wis. Stat. § 950.04(1v) states that "[v]ictims of crimes have the following rights" and that section then lists the enumerated rights of victims from (ag) to (zx). The court should hold that the plain meaning of the statute directs that the list of rights to be asserted are the exclusive rights of an alleged victim.

a. The phrase "right to assert" in Wis. Stat. § 950.105 does not provide an alleged victim standing beyond the ability to assert the specifically enumerated rights.

Alleged victims possess the right to assert enumerated rights. Even if § 950.105 was ambiguous, the enumeration of specific alternatives in a statute is evidence of legislative intent that any alternative not enumerated is to be excluded. *Perry v. Menomonee Mutual Insurance Co.*, 2000 WI App 215, 239 Wis. 2d 26, 619 N.W.2d 123. Enumeration of alternatives in a statute is evidence of legislative intent that alternatives not specifically enumerated are excluded. *C.A.K. v. State*, 154 Wis. 2d 612, 621, 453 N.W.2d 897 (1990).

The Court previously contended with whether an enumerated list of rights for victims was an exhaustive list in *Schilling v. State Crime Victims Rts. Bd.* In *Schilling*, the Court determined whether the first Section 9m of the Wisconsin Constitution, at that time, was intended to serve as a statement of purpose or was intended to provide an independent and enforceable right. *Schilling v. State Crime Victims Rts. Bd.*, 2005 WI 17, ¶ 16, 278 Wis. 2d 216, 225, 692 N.W.2d 623, 627. While that case focused on a constitutional provision, just as

previous cases construing a statute become a part of the understanding of plain meaning, previous cases construing the same types of rights could be used by this court to understand the plain meaning of the class of rights provided under a similar statute. *See Meyers v. Bayer AG, Bayer Corp.*, 2007 WI 99, ¶ 23, 303 Wis. 2d 295, 308. The Court weighed whether the language "this state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy" was enforceable as right. The court emphasized that the provision used broad terms to describe how the State must treat crime victims and found that "[l]ike statutes, constitutional provisions may include statements of purpose that use broad language. *Id.* "As with a statute's statement of purpose, a constitutional section's statement of purpose does not provide for an independent, enforceable claim, as it is not in itself substantive." *Id.* Opening the section "with broad indications of how crime victims should be treated, followed by a detailed list of privileges and protections to which victims are entitled, shows that the first sentence" was intended to serve as a general guide regarding victims' rights, while

the second sentence provided an outline of specific rights. *Id.* at ¶ 17.

The enumerated list of rights to be asserted is exhaustive under § 950.105. As the court noted in *Schilling*, the presence of language identifying how crime victims should be treated was a description of intent, not a separate enforceable right. The rights of victims are those found among the enumerated list provided within that section. A provision indicating a "right to assert" does not confer additional standing, but instead acknowledges the ability to assert enumerated rights.

The context of Wis. Stat. § 950.105 within chapter 950 also directs that alleged victims do not possess standing beyond the enumerated rights. "Context is important to meaning." *Kalal*, 271 Wis. 2d at *¶ 46.* "Statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Id.* Chapter 950 provides an ability to victims to assert rights under the statutes and then within the same chapter provides a

listing of such rights to be asserted. The context of the provisions in chapter 950 dictate that victims have standing to assert rights as then listed within that chapter. TAJ's interpretation would divorce the rights list found within Chapter 950 from § 950.105 and instead identify that listing as but an example of rights to assert without textual justification. A more substantial right, like a litigation right, which otherwise could have been listed, is not found within that chapter or other law but would nonetheless be available. Avoidance of absurd results would be disregarded and the context of the provisions disregarded under such interpretation.

b. Alleged crime victims lack standing to litigate the merits of motions in criminal court proceedings under Wis. Stat. § 950.105.

Alleged victims lack standing to litigate the merits of motions in a criminal prosecution. Contrary to TAJ's position, "[t]he titles to subchapters, sections, subsections, paragraphs and subdivisions of the statutes and history notes are not part of the statutes." Wis. Stat. § 990.001(6). Wis. Stat. § 950.105 provides that "[a] crime victim has a right to assert ... his or her rights as a crime victim under the statutes or under

article I, section 9m, of the Wisconsin Constitution." While this section may be titled "standing" it does not confer comprehensive party status standing, nor that an alleged victim can demonstrate an injury traceable to the challenged conduct. The chapter plainly identifies an alleged victim's ability to assert rights and provides a list of the rights to be asserted.

While an alleged victim may have an interest in records sought by a defendant, an interest in such records does not confer a standing to intervene on the merits under § 950.105. Standing requires a party seeking to invoke the court's jurisdiction has a personal stake in the outcome of the proceeding which is related to a distinct injury that has a causal connection between the claimed injury and the challenged conduct. *Park Bancorporation, Inc. v. Sletteland*, 182 Wis. 2d 131, 145, 513 N.W.2d 609, 615 (Ct. App. 1994). An alleged victim's interest in records does not bear upon a court's evaluation of the legal questions raised by a *Shiffra-Green* proceeding. No privacy interest is implicated by weighing whether defendant has reasonably investigated sought-after information regarding the alleged victim

prior to making the offer of proof. Nor does the court's examination of whether the defendant has made the sufficient showing that sought-after records contain relevant information necessary to the determination of guilt or innocence. A court does not consider legal arguments on materiality, relevance, or necessity differently because the records are private. An alleged victim's interest in records does not bear upon a court's evaluation of these legal questions and none should be inferred. Furthermore, alleged victims retain the ability to refuse disclosure of the records after a merits proceeding thus negating any undefined injury.

An alleged victim lacks the ability to litigate the merits of a defendant's *Shiffra-Green* motion. There is no need to evaluate any common law link between a legal interest and standing rights. The statute plainly provides a "right to assert" the enumerated rights provided under law. This language is couched in a context with other statutory language within the same chapter providing an exhaustive listing of rights. Wis. Stat. § 950.04(1v) states that "Victims of crimes have the following rights: ..." and proceeds to provide a lengthy

list. The listing provided does not include language like "including", "such as" or "among" that would render the list non-exhaustive. Instead, specific rights are enumerated and the narrow ability to assert those rights is provided. If the opposing positions were adopted, the court would read into the enumerated list an ability to litigate the merits of a *Shiffra-Green* request when no causal injury can be identified. There is no clear endpoint of additional proceedings where additional rights to litigate would then emerge. This grants party status to an alleged victim, assuredly absurd result considering the text of § 950.105.

Johnson's interpretation of Wis. Stat. § 950.105 does not limit victim's representation to a district attorney. Counsel is available to an alleged victim and that counsel may advise on the rights afforded to a person under the constitutional provisions and statutory provisions. A district attorney may also offer representation of the victim's input as connected to the enumerated rights per statute. An alleged victim's ability to have rights represented is not limited by exclusion from the merits of a *Shiffra-Green* proceeding.

c. The drafting history Wis. Stat. § 950.105 reflects that alleged victims do not possess standing to litigate *Shiffra-Green* motions.

Because the meaning of the statute is plain, the court may stop the inquiry. *Kalal 271 Wis. 2d* at ¶ 45. If a plain and clear statutory meaning is initially ascertained, "then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." *Bruno v. Milwaukee Cty.*, 2003 WI 28, ¶ 20, 660 N.W.2d 656. Where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation, such as legislative history. *Kalal*, 271 Wis. 2d at ¶ 46.

Nevertheless, the drafting history of the law underscores Johnson's analysis of Wis. Stat. § 950.105. As Section 950.105 was considered, Tony Gibart, Policy Coordinator of the Wisconsin Coalition Against Domestic Violence, provided input to the provision's proponent contrary to the State's assertions. In an email exchange, Mr. Gibart acknowledged that *Schilling* holds that the Crime Victim Rights Board (CVRB) had only the authority to enforce rights specifically enumerated in Chapter 950. Memorandum from Tony Gibart, Policy Coordinator, Wis.

Coal. Against Domestic Violence, to Rep. Andre Jacque, Wis. Leg. (Apr. 15, 2011) (available in drafting file for 2011 Wis. Act 283, https://docs.legis.wisconsin.gov/2011/related/drafting_files/wisconsin_acts/2011_act_283_ab_232/02_ab_232/11_1942df.pdf at pp. 12–14). Mr. Gibart continued by proposing that 950.04(1v)(a) be recreated to read that victims hold the right, "[t]o be treated with fairness, dignity and respect for their privacy by public officials, employees or agencies." *Id*. As such, he advocated for an additional enumerated right in response to the court's holding in *Schilling*. Additionally, he acknowledged that the CVRB could not act in reference to the controversy in that matter because an enumerated right in Chapter 950 had not been violated. *Id*. Accordingly, the bill's proponent operated during deliberation with input directing that Chapter 950 conferred enumerated rights to victims. Absent a direct bestowal, an alleged victim lacks such a right.

II. The recent amendment to the Constitution does not apply to Johnson's matter because the amendments are prospective.

TAJ lacks standing under the recent amendment because a constitutional amendment goes into effect "upon the certification of a statewide canvas of the votes." *State v. Gonzales*, 2002 WI 59, ¶ 25, 253 Wis. 2d 134, 145. Constitutional amendments that deal with the substantive law of the State are presumed to be prospective in effect unless the text contains express indications to the contrary. *Dairyland Greyhound Park, Inc. v. Doyle*, 2006 WI 107, ¶ 22, 295 Wis. 2d 1, 30. And a court should not infer a retroactive application of a constitutional amendment if no intention to make such an amendment retrospective in operation is clearly apparent from the terms of the amendment. *Kayden Indus., Inc. v. Murphy*, 34 Wis. 2d 718, 732, 150 N.W.2d 447, 453 (1967).

Consequently, a criminal case that was commenced prior to the effective date of an amendment and of which the pertinent issue was litigated prior to the amendments is a settled issue based on law at the time of litigation. Contrary to TAJ and the State's positions, the pertinent language of the 2020 constitutional amendment does not direct that the amendment applies to Johnson's case. First, the State cites *State v. Lagundoye*, 2004, WI 4,

268 Wis. 2d 77, 674 N.W.2d 526 to stand for the proposition that new criminal procedural rules apply retroactively to pending cases (State's brief p. 31). By contrast, that case involved a collateral challenge to a judgment of conviction based on caselaw development. Because it did not touch upon the applicability of a constitutional amendment to a settled dispute, the reasoning therein is inapt to this matter. Furthermore, the rights to alleged victims are difficult to grasp as being procedural rather than substantiative so the other allusions to such law are unclear.

The additional reasoning cited regarding applicability of the amendment is not supported by the text of the amendment. Coupling Subsection (2)(i) with subsection (4) to then apply confirm an applicability to Johnson's case is not a persuasive interpretation. Subsection (4) provides the mechanism of enforcement and review of rights provided under law, not explicit language on retroactive application of the amendment. Such an interpretation effectively requires that this Court read the following language into the recent amendment: "This amendment applies to matters commenced

prior to the effective date of this amendment and of which the pertinent issue was litigated."

The State's position that because the amendment may apply to persons who became victims prior to the effective date of the amendment, such an amendment must apply to Johnson does not hold. Acts of the legislature which do not expressly prescribe the time when it takes effect come into force on the day after its date of publication of the act. Wis. Stat. § 991.11. If a statute specifies an effective date within the text, those statues overcome the defaults provided under § 991.11. Constitutional amendments, by contrast, are presumed prospective unless the amendment explicitly identifies its retroactive application to pre-existing issues. *Dairyland*, 295 Wis. 2d, ¶ 22. Johnson's motion was raised prior to the enactment of the recent amendment. Absent language explicitly identifying application to a matter like Johnson's, none should be inferred because the amendment may apply to a future case where a victim was wronged prior to enactment.

III. The Wisconsin Constitution does not provide an alleged victim a constitutional right to litigate the merits of a motion for In Camera review.

a. The plain meaning of the provisions at issue provides only narrow standing to assert enumerated rights.

A court should give priority to the plain meaning of the words in a constitutional provision within the context the words are used. *Buse v. Smith*, 74 Wis. 2d 550, 568, 247 N.W.2d 141 (1976). The plain meaning of the words is best discerned by understanding the words obvious and ordinary meaning at the time the provision was adopted. *Dairyland* Greyhound Park, Inc. v. Doyle, 2006 WI 107, ¶ 117, 295 Wis. 2d 1, 81, 719 N.W.2d 408. A court may also take into account contemporary provisions of the constitution when discerning the ordinary meaning. *Dairyland*, 295 Wis. 2d at ¶ 117.

The initial incarnation of the constitutional provision identifying victim rights also offered an enumerated, exclusive list of rights. Prior to the recent amendment, Section 9m of the Wisconsin Constitution formerly provided:

> "Victims of crime. Section 9m. [As created April 1993] This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law: timely disposition of the case; the opportunity to attend court

> proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant; reasonable protection from the accused throughout the criminal justice process; notification of court proceedings; the opportunity to confer with the prosecution; the opportunity to make a statement to the court at disposition; restitution; compensation; and information about the outcome of the case and the release of the accused."

The amended version expands upon an enumerated list by explicitly creating a series of new rights. It does not expand previous rights by adding words such as "including" or "among" in the list of rights. Instead, the listing echoes the prior exhaustive list and also the enumerated list of statutory rights in Wis. Stat. § 950.04(1v)(ag)–(zx). Drafters could have included language explicitly recognizing that the rights listed were non-exhaustive, but no such language is included. Instead, per the analysis in *Schilling*, the enumerated list lengthens to include additional rights. The State's argument that subsection (2) identifies crime victims' rights "to justice and due process" is contrary to the reasoning in *Schilling*. A policy statement is not an independent, self-executing right to be enforced when provided within the context of an enumerated and interrelated list. Accordingly, the policy statement in

subsection (2) followed by a listing of rights does confer rights beyond those enumerated and again emphasizes the exhaustive quality of the enumerated list.

TAJ's argument that the term "any proceeding" from subsection (2)(i) expands upon the types of standing and abilities to litigate issues on the merits beyond the enumerated list also fails. That section states alleged victims may request to be "heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon." *Id*. That provision stands in opposition to the interpretation that TAJ advances. The plain language of that provision does not contain explicit standing to litigate on the merits of a legal issue in response to a defense motion when it easily could have been included. No right to participate in other aspects of the criminal prosecution should be inferred absent language providing such a right when a such significant listing of rights is otherwise provided.

The context of that provision also weighs against TAJ's interpretation. That term is included within one subsection within a lengthened list of rights. It is not

an independent clause of general applicability prior to the lengthy listing. And, the listed types of proceedings within that section (2)(i) do not include *Shiffra-Green* or evidentiary litigation. Instead, the examples provided regarding an ability to heard are connected to release and implementation of sentence or its disposition following conviction. The subsection does not mention evidentiary motions related to the guilt or innocence of a defendant. Each included example instead touches upon the court's authority to hold, confine, sentence, and release a defendant. A *Shiffra-Green* proceeding is wholly dissimilar proceedings from that class of proceedings. It would be an unreasonable interpretation to identify that the last clause of one item within an enumerated list of rights expands the types of proceedings for which an alleged victim may be heard and also may then advance legal arguments on the merits. The inclusion of such a substantive expansion of the rights provided in the enumerated list would be in direct conflict to the additional provision of Section 9m which specifically directs the section is not to be interpreted to afford party status to any victim. Wis. Cost. Art 1, § 9m.

Further, mere listing of a privacy right within the amendment does equate standing to litigate all issues that reference that interest no matter where within the prosecution of the defendant. Instead, the ability relates to the ability to establish that privacy interest as a privacy interest to the court in specified settings. This Court should hold that, like the inclusion of language making the right to be treated with dignity and respect as a self-executing right, substantive rights outside of the enumerated list should not be included amongst the rights explicitly recognized.

b. The drafting files and associated materials do not support the interpterion advanced by TAJ and the State, nor do assumptions regarding the ratification debate.

The Court should conclude its inquiry at the plain meaning of the constitutional text and it need not go to the drafting files, testimony, or ratification debate. However, if the court found ambiguity in the language of the text, courts may view the "historical analysis of the constitutional debates and of what practices were in existence" at the time of passage. *Dairyland*, ¶ 24. This principle permits courts to consider debates surrounding amendments to the constitution and the circumstances at

the time these amendments were adopted. *Id*.

The contemporary understanding of the constitutional text underscores an alleged victim's inability to litigate the merits of a constituent part of the prosecution. District Attorneys have the sole ability prosecute crime in Wisconsin. Wis. Stat. § 978.05. While Section 9m provides an ability to assert the rights found in the constitution, or elsewhere in statute, it does not provide a right utilize the authorities or powers refenced under Chapter 978. The recent amendment also does not provide authority to victims to participate in litigation on the merits in *Shiffra-Green* proceedings or hearings envisioned under Wis. Stat. § 971.23. That section identifies what the parties to the action must disclose during discovery, authority of the court in the administration of discovery, and evidentiary issues.

Practices in existence contemporaneous to the recent amendment assist the court in understanding the text at issue. *Schilling*, at ¶ 16. An observation that alleged victims already participate in the administration of justice under *Shiffra-Green*, Chapter 978 or administration of discovery of discovery in § 971.23

would be inaccurate as caselaw has not outlined such a proceeding. An alleged victim arguing the merits would certainly be a new participant an evidentiary or discovery motion. Accordingly, the recent amendments do not confirm a pre-existing right to participate. Instead, the contemporary understanding of the text of the recent amendment must be construed as developing the previous enumerated list in the manner specified. The plain meaning and context of that enumerated list weighs in favor of the exclusive list interpretation and against conferring additional unenumerated rights.

TAJ contentions regarding the drafting files and testimony regarding the intentions of the drafters or the public are unclear. A review of these drafting files reveals no outright intention to offer an alleged victim the ability to litigate the merits of an issue before the criminal court. It would be speculative to assert that TAJ's interpretation would be the shared understanding of the drafters of the proposed amendments absent specific evidence to the contrary. TAJ and the State do not provide examples. Instead, a better understanding would be to utilize the circumstances of

law at the time the amendments were adopted which include prosecution being the exclusive province of a District Attorney, the rights of alleged victims being an enumerated list of rights granted, and the specific directive of the amendment that victims are not to be parties under Wis. Const. art. 1, 9m(6).

TAJ's speculative conclusions regarding the LRB analysis of the recent amendments are also non-persuasive. TAJ argues that the LRB Analysis reflects his understanding of a right to participate in the merits of a *Shiffra-Green* proceeding because analysis does not focus on a list of examples where he could be heard. (TAJ brief at 26.) However, the same analysis cited by TAJ also does not provide any analysis that a testimonial or evidentiary proceedings are now hearings where the victim may participate on the merits.

c. The principles utilized in Jessica J.L.'s holding remain consistent with law.

The recent amendment "may not be interpreted to supersede a defendant's federal constitutional rights." Wis. Const. art. I, § 9m(6). A criminal defendant has a constitutional right to be given a meaningful opportunity to present a complete defense and in-camera review and

disclosure of records may be necessary to presentation of a complete defense. *State v. Shiffra*, 175 Wis. 2d 600, 605, 499 N.W.2d 719, 721 (Ct. App. 1993). Because a *Shiffra-Green* motion is a proceeding related to the determination of guilt or innocence, the proceeding is part of the prosecution. *Jessica J.L.*, at 630. The only attorneys who may prosecute a sexual assault are a district attorney or a special prosecutor. *Id.* Non-parties are not empowered to raise legal arguments or advance positions at such a proceeding. *Id.* The recent amendment provides that it does not grant party status or supersede a defendant's rights, consistent with the holding of *Jessica J.L.* Wis. Const. art. 1, § 9m(6).

State v. Denis L.R. does not abrogate *Jessica J.L.* *State v. Denis L.R.*, 2005 WI 110, 283 Wis. 2d 358, 699 N.W.2d 154. In that case, a defendant moved for in camera inspection and as part of the defendant's materiality showing, an affidavit was submitted that referenced conversations had between a witness and the mother of the alleged victim. *Id.* at 12. The questions for the court centered on who held therapist-patient privilege and whether the mother waived the privilege. *Id.* at ¶ 1.

The court did not evaluate whether the nonparty had standing to participate in the *Shiffra-Green* process. Contrary to State's assertion, this case was an examination of Wis. Stat. § 905.04 and exceptions to privilege. It did not consider the issue of standing for non-parties in a dispositive sense and the Court, in a footnote, made reference that the petitioner mother did not explain how she had standing to intervene in the appeal at hand. *Id.* ¶30 n.9. No holding regarding rights of intervenors or standing for privilege holders within the *Shiffra-Green* procedures was issued.

Additionally, *Jessica's J.L.* utilization of *Woznicki v. Erickson* in its reasoning is also consistent with prohibition of nonparties from participating in the merits of a *Shiffra-Green* proceeding. In *Woznicki*, a defendant was charged with a criminal offense related to employer personnel records. *Woznicki v. Erickson*, 202 Wis. 2d 178, 181–82, 549 N.W.2d 699, 701 (1996). An investigation ensued, wherein a district attorney subpoenaed the defendant's personnel file, but charges were later dropped. *Id.* The defendant moved for an order prohibiting the District Attorney from releasing the

records. *Id.* While the "court recognized the reputational and privacy interests that were inherent in the records," the precise circumstances of this matter are not applicable to the issues at hand. That case focused on a subpoena issued by a prosecutor, not an in-camera inspection sought under a defense filing. The *Jessica J.L's* court's allusion to the holding in *Woznicki* withstands scrutiny. The *Woznicki* Court identified that a De Novo review to the Circuit Court was available to the subjects of the open records request. *Woznicki*, 202 Wis.2d at 185. This allusion drew upon the comparative qualities of a judicial review of a De Novo review and an in-camera review. A *Shiffra-Green* motion is not a motion to the court for immediate production of records to the defense. Instead, it is a motion to release records to the court for purposes of in-camera review wherein the court may release relevant and probative records. In this way, the *Jessica J.L.* court alluded the process outlined in *Woznicki* as a method to understand the balancing of interests a circuit court was capable of exercising under *Shiffra-Green*.

Accordingly, *Jessica J.L.* remains instructive

regarding a court's evaluation of records subject to a *Shiffra-Green* motion. A court can conduct the necessary balancing of the defendant's constitutional rights alongside the victim's enacted rights through in-camera review. The recent amendments do not direct that a court is now incapable of such review or must conduct the assessment differently. A court must still weigh the privacy considerations found under the recent amendments along with the defendant's due process rights to present a meaningful defense. Absent a direct bestowal of an ability to participate in the merits of proceedings within a prosecution, *Jessica J.L.* remains instructive.

CONCLUSION

For the reasons stated, Johnson now respectfully requests that this Court reverse the Court of Appeals' decision.

Dated this _____ day of June, 2021.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with mono spaced font. This brief has twenty-six (26) pages.

Dated this _____ day of June, 2021.

Nathan J. Wojan

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this _____ day of June, 2021.

Nathan J. Wojan