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STATE OF WISCONSIN

IN SUPREME COURT

No. 2019AP1565-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

RYAN HUGH MULHERN,

Defendant-Appellant.

PETITION FOR REVIEW AND APPENDIX

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TABLE OF CONTENTS

Page

ISSUES PRESENTED 1

CRITERIA FOR REVIEW 2

STATEMENT OF THE CASE 3

ARGUMENT 8

I. Review is warranted for this Court to revisit, clarify, and modify its case law holding that evidence of a victim's lack of sexual conduct is barred by the rape shield statute. 8

A. Wisconsin law currently holds a victim's lack of sexual conduct is inadmissible rape shield evidence, even if it may be otherwise admissible, probative, and not unduly prejudicial. 8

B. The rape shield statute should not apply to a victim's lack of sexual activity when that evidence doesn't implicate the concerns addressed by the statute. 10

C. Review is warranted because only this Court can modify or overrule its own precedent. 12

II. This Court should correct the court of appeals' errors in applying the harmless error doctrine and clarify how courts should apply this test in these cases. 13

CONCLUSION 17

Page

TABLE OF AUTHORITIES

Cases

State v. Bell,
2018 WI 28, 380 Wis. 2d 616,
909 N.W.2d 750 ..... 7, 8, 9, 10

State v. Gavigan,
111 Wis. 2d 150, 330 N.W.2d 571 (1983) 8, 9, 10

State v. Martin,
2012 WI 96, 343 Wis. 2d 278, 816 N.W.2d 270..... 13, 14

State v. Mitchell,
144 Wis. 2d 596, 424 N.W.2d 698 (1988) 9, 10

State v. Pulizzano,
155 Wis. 2d 633, 456 N.W.2d 325 (1990) 10

Statutes

Wis. Stat. § (Rule) 809.62(1r)(e)..... 2, 8

Wis. Stat. § (Rule) 809.62(1r)(c)..... 2, 3, 8, 12

Wis. Stat. § 972.11(2)..... 8

Wis. Stat. § 972.11(2)(c)..... 9

ISSUES PRESENTED

The manifest purpose of Wisconsin's rape shield statute is to bar evidence that is generally irrelevant and that otherwise operates to harass or humiliate sexual assault victims or to prevent them from reporting these crimes and participating in these prosecutions.

1. Given that purpose, must the rape shield bar relevant evidence of the victim's lack of sexual conduct that the victim offers to corroborate her claim of sexual assault, that is not prejudicial to her or to the defendant, and that causes none of the harms that the statute protects against?

Because the court of appeals was bound by this Court's precedent holding that the rape shield statute bars evidence of a victim's lack of sexual conduct, the court of appeals did not decide this question.

2. Here, the State elicited testimony from the victim that she did not have sex the week before defendant-appellant Ryan Mulhern sexually assaulted her. The State introduced that statement to corroborate the victim's claims by establishing that Mulhern was the probable source of unidentified male DNA found in her vagina the day after the assault.

Assuming that the rape shield law barred the victim's statement, is the error harmless, given that the admitted evidence was relevant, non-prejudicial, and admitted in violation of a statute designed to protect victims?

The court of appeals concluded that the error was not harmless, reversed Mulhern's conviction, and remanded for a new trial.

CRITERIA FOR REVIEW

This case demonstrates that something is deeply awry with Wisconsin courts' understanding and application of the rape shield statute. Here, the State introduced evidence that was relevant to corroborate the victim's claim that Mulhern forcibly penetrated her. Under our courts' understanding of the rape shield statute, admission of that evidence of lack of sexual conduct violates the statute. And under the court of appeals' rigid (and incorrect) application of the harmless-error test, that error was reversible. Accordingly, because of a violation of a statute designed primarily to protect sexual assault victims and encourage them to participate in prosecutions of these crimes, the court of appeals reversed the jury conviction of guilt and the victim has to relive her trauma in a second trial. In effect, the statute is acting as a sword, not a shield.

While "that can't be right" is not a statutory criterion for this Court to grant review, it is the most succinct summary of the court of appeals' resulting decision and of why this Court should grant this petition. Even so, the two issues implicate multiple statutory criteria for review.

The first issue, which asks this Court to reconsider its holdings applying the rape shield bar to this sort of "lack of sexual activity" evidence, implicates two criteria. First, this Court's past holdings are "ripe for reexamination" due to "changing circumstances." *See* Wis. Stat. § (Rule) 809.62(1r)(e). Second, a decision by this Court will help develop, clarify, or harmonize the law and the question presented is a novel one, which will have statewide impact, and it involves "a question of law of the type that is likely to recur unless resolved by" this Court. *See* Wis. Stat. § (Rule) 809.62(1r)(c)2.–3.

To that end, the evidence that the State introduced here to corroborate the victim's accusations violated none of the purposes of the rape shield statute. In fact, excluding the evidence would have contravened those purposes. So, while most cases involving rape shield evidence involve disputes over the Court's exclusion of evidence that the defendant believes violated his rights, review is warranted for this Court to clarify the law on the less-common, but not infrequent, situation where the victim offers evidence of lack of sexual conduct to support allegations of assault.

The second issue, involving the court of appeals' application of the harmless error test, likewise implicates the criterion under Wis. Stat. § (Rule) 809.62(1r)(c)2. A decision by this Court will help develop, clarify, or harmonize the law and the question presented is a novel one, the answer to which will have statewide impact. Notably, harmless error is a test designed to be flexible depending on the circumstances of the case. Thus, assuming harmless error would apply to the erroneous introduction of the type of lack-of-sexual-activity evidence here, this Court's guidance is warranted to set forth what additional or alternative factors weigh in the harmlessness analysis. Moreover, given the court of appeals' incorrect application of reversible error to grant Mulhern relief, this Court's review is likewise warranted.

STATEMENT OF THE CASE

In the early morning hours of Tuesday, November 22, 2016, Mulhern sexually assaulted Lisa, an acquaintance, in her home. The State charged Mulhern with one count of second-degree sexual assault and one count of strangulation and suffocation. (R. 1; 8.)

The case went to trial. Lisa testified that on Monday night, November 21, Mulhern called Lisa sounding "upset,"

depressed, and "almost frantic" over some personal issues. (R. 85:127–30.) Lisa, who had known Mulhern for a little over a year, was concerned for him; she invited him over but made clear that if he slept over, he would do so on the living room futon and "[she] would be there for him as a friend" only. (R. 85:128, 132.)

Mulhern arrived at around midnight on November 22. (R. 85:128, 153.) Lisa tried to get Mulhern to talk about what was upsetting him, but he avoided discussing himself. (R. 85:129–30.) Tired, Lisa eventually told Mulhern she was going to bed and directed Mulhern to the living room futon. (R. 85:129–30, 132.)

Instead, Mulhern followed Lisa into her room and got in her bed, where she was lying under her covers. He put an arm over her, "just trying to cuddle." (R. 85:133.) Though Lisa tolerated that contact, it escalated to Mulhern's forcefully kissing her, forcibly removing her clothes, touching her, and ultimately forcing penis-to-vagina sex as he pinned her down by her neck. (R. 85:134–47.) Throughout the attack, Lisa told Mulhern no and fought back, but he overpowered her. (R. 85:136–47.)

After the assault ended, Lisa demanded that Mulhern leave her apartment. He didn't leave until she threatened to call the police. (R. 85:147–48.)

When daytime arrived, Lisa reported the assault to multiple people. At around 11:30 a.m., Lisa called a local sexual assault resource team (SART). (R. 85:155–56.) Lisa also reported the assault to police on November 23. (R. 85:157.)

Shortly after Lisa called SART on November 22, she went to the hospital. (R. 85:155–56.) The nurse who examined Lisa testified that Lisa had significant injuries including

tenderness and tightness on her neck, a sore throat, a semicircular wound on her right shoulder, and tenderness on her right chest wall, inner thighs, and inner calves. (R. 85:207–08.) Lisa also had tenderness on her inner and outer labia, a linear tear to the left inner labia, an abrasion on her right vaginal wall, and redness on the left vaginal wall. (R. 85:208.) The nurse, who received a report of Lisa's description of the assault, said that the injuries were consistent with Lisa's "stated history." (R. 85:209.)

DNA analyst Vincent Purpero tested a series of swabs taken from Lisa. (R. 85:185, 188.) His testing of a swab taken from Lisa's neck revealed the presence of saliva-based DNA from Mulhern. (R. 85:189, 192–93.) Purpero also identified the presence of male DNA from vaginal swabs, but the amount reflected that it was touch, i.e., skin cell DNA, and was insufficient to allow him to identify whose it was. (R. 85:191, 197.)

Before the State rested, it sought to recall Lisa and Purpero. (R. 86:38–39.) It did so to ask Lisa whether she had "sexual intercourse or sexual contact with anyone for one week prior to November 22nd, 2016." (R. 86:41; App. 113.) Over counsel's objections, the court allowed the testimony, noting that the proposed testimony fell outside the rape shield statute because it involved lack of sexual conduct. (R. 86:44; App. 116.)

When asked, Lisa stated that she did not have sexual contact or intercourse with anyone in the week before Mulhern's assault. (R. 86:51–52.) The State also recalled Purpero to elicit his opinion that "foreign DNA deposited in the vagina" generally would be gone within "five days after an assault." (R. 86:57–58.)

Mulhern testified as well. He agreed that he went to Lisa's house at around midnight on November 22. He denied that they had oral, vaginal, or anal sex or that he had "any other kind of sexual contact with her" below her waist. (R. 86:90–99, 101.)

Mulhern's testimony was full of contradictions. He denied texting Lisa that he was having issues that he wanted to talk about. (R. 86:90, 105.) He confirmed that that was incorrect, however, after reviewing text messages reflecting that he persistently asked to come over and told Lisa he was "about to have a nervous breakdown." (R. 86:106.) He denied that Lisa told him ahead of time, in response to his sending her suggestive messages, that she would not have sex with him. (R. 86:109.) Again, he had to recant that statement when he reviewed text messages contradicting his testimony. (R. 86:109.) He denied recalling any agreement or discussion that he would sleep on the futon, (R. 86:90, 117), but he conceded, after being shown text messages, that Lisa had asked him to sleep on the futon if he did come over, (R. 86:118).

Mulhern nevertheless testified that he and Lisa consensually kissed in Lisa's room, that they each removed their own clothes, and that they progressed toward sex. (R. 86:95–97, 113.) Mulhern denied that Lisa did or said anything to lead him to believe that she did not want the contact until he was about to put his penis into her vagina. (R. 86:97–100, 112.) At that point, Mulhern said, Lisa suddenly and without explanation yelled, "what the fuck," he stopped the contact, and he left her apartment. (R. 86:100–02, 112.)

The jury found Mulhern guilty of count one—second-degree sexual assault—but acquitted him of the strangulation and suffocation count. (R. 86:161.) The court sentenced him to nine years of initial confinement and seven years of extended supervision. (R. 90:54.)

Mulhern appealed to the court of appeals, arguing that the trial court violated the rape shield statute when it admitted Lisa's statement that she had sex with no one else in the week before the assault. *State v. Ryan Hugh Mulhern*, No. 2019AP1565-CR (Wis. Ct. App. Oct. 6, 2020) (per curiam) (App. 101–112). The State acknowledged that under this Court's precedent in *State v. Bell*, 2018 WI 28, ¶ 63, 380 Wis. 2d 616, 909 N.W.2d 750, the rape shield statute barred Lisa's statement that she hadn't had sex with anyone else the week before. (App. 108.) It argued that the error was harmless under circumstances where the evidence was otherwise relevant, it was not prejudicial to Mulhern, its nature was not contrary to the manifest purpose of the rape shield statute, and it went to a fact that was not essential to the State's case.

The court of appeals disagreed and reversed. Despite the uncontroverted evidence of Lisa's significant injuries consistent with a forcible sexual assault, it framed the case as a "he-said, she-said," i.e., a sexual assault case where the only evidence is the victim's word against the defendant's. It then relied heavily on the State's closing remarks emphasizing Lisa's statement, while disregarding the strength of the State's evidence and the contradictions and weaknesses in Mulhern's testimony. (App. 109–11.)

Accordingly, should the court of appeals' decision stand, Mulhern will receive—and Lisa will have to again recount the assault at—a new trial because the State introduced evidence that was relevant, that was not unduly prejudicial to Mulhern, and that did not reflect negatively on Lisa. The State respectfully asks this Court to grant review and reverse the decision of the court of appeals.

ARGUMENT

I. Review is warranted for this Court to revisit, clarify, and modify its case law holding that evidence of a victim's lack of sexual conduct is barred by the rape shield statute.

As noted, this Court's decisions holding that evidence of a victim's lack of sexual conduct is inadmissible are "ripe for reexamination" due to "changing circumstances." *See* Wis. Stat. § (Rule) 809.62(1r)(e). Moreover, a decision by this Court on this issue will help develop, clarify, or harmonize the law; the question presented is a novel one, which will have statewide impact; and it involves "a question of law of the type that is likely to recur unless resolved by" this Court. *See* Wis. Stat. § (Rule) 809.62(1r)(c)2.–3.

A. Wisconsin law currently holds a victim's lack of sexual conduct is inadmissible rape shield evidence, even if it may be otherwise admissible, probative, and not unduly prejudicial.

Wisconsin's rape shield statute, Wis. Stat. § 972.11(2), bars admission of "any evidence" of the complainant's "prior sexual conduct." "Prior sexual conduct includes a lack of sexual conduct, meaning that evidence that a complainant had never had sexual intercourse is inadmissible." *Bell*, 380 Wis. 2d 616, ¶ 63 (citing *State v. Gavigan*, 111 Wis. 2d 150, 159, 330 N.W.2d 571 (1983)). "This prohibition extends to indirect references to a complainant's lack of sexual experience or activity." *Id.* (citing same). "Evidence of this nature is prohibited because it 'is generally prejudicial and bears no logical correlation to the complainant's credibility.'" *Id.* (citing *Gavigan*, 111 Wis. 2d at 156).

Both *Bell* and *Gavigan* involved the State's introduction of evidence that the victim was a virgin. In *Bell*, this Court held that such evidence was inadmissible under the rape shield law. 380 Wis. 2d 616, ¶ 65. Still, it concluded that the error was not prejudicial because the evidence—that the victim told police she was a virgin and her hymenal tissue was disrupted—was not connected to any claim or argument that Bell necessarily caused the disruption.

Likewise, in *Gavigan*, the victim offered testimony inferring that she was a virgin before the assault. 111 Wis. 2d at 160. This Court stated that those statements were "inadmissible" under the rape shield statute for the purpose of establishing that the victim was a virgin. *Id.* This Court nevertheless held that the testimony was relevant and highly probative to the issue of consent, and the prejudicial effect was "somewhat attenuated" because the statements indirectly suggested that the victim was a virgin. *Id.* at 161. Accordingly, in this Court's view, the statements were admissible with a limiting instruction. *Id.*

After *Gavigan*, the Legislature amended Wis. Stat. § 972.11 to effectively bar courts from allowing the admission of exceptions to rape shield evidence beyond the Legislature's announced exceptions "regardless of the purpose of the admission." Wis. Stat. § 972.11(2)(c). This Court understood that language to preclude it from doing what it did in *Gavigan*: "We conclude that the legislature intended to exclude evidence of a complainant's prior sexual conduct unless it falls within the three exceptions stated in the statute. Because the evidence of the complainant's [lack of] prior sexual conduct in this case does not fall within these three exceptions, we conclude that the evidence was inadmissible." *State v. Mitchell*, 144 Wis. 2d 596, 619, 424 N.W.2d 698 (1988). In *Mitchell*, the inadmissible evidence was

testimony that the 11-year-old victim, like the victims in *Bell* and *Gavigan*, was a virgin. *Id.* at 620.

Even though *Bell*, *Mitchell*, and *Gavigan* involved evidence of a complete lack of sexual conduct by the victim, those cases reflect language and reasoning holding that *any* lack of sexual conduct by the victim is inadmissible under the rape shield statute unless it fits one of the three statutory exceptions. *See Bell*, 380 Wis. 2d 616, ¶ 63; *Gavigan*, 111 Wis. 2d at 159. Because that interpretation of the rape shield statute does not comport with its purpose, this case presents this Court with an opportunity to align its case law with the statutory purpose.

B. The rape shield statute should not apply to a victim's lack of sexual activity when that evidence doesn't implicate the concerns addressed by the statute.

This Court has identified four legitimate interests that the statute serves:

> First, it promotes fair trials because it excludes evidence which is generally irrelevant, or if relevant, substantially outweighed by its prejudicial effect. Second, it prevents a defendant from harassing and humiliating the complainant. . . . Third, the statute prevents the trier of fact from being misled or confused by collateral issues and deciding a case on an improper basis. Fourth, it promotes effective law enforcement because victims will more readily report such crimes and testify for the prosecution if they do not fear that their prior sexual conduct will be made public.

State v. Pulizzano, 155 Wis. 2d 633, 647, 456 N.W.2d 325 (1990). Construing the rape shield statute to bar a victim's voluntary statement regarding lack of sexual conduct, as *Bell*

and its predecessors do, is contrary to all four of those interests.

The facts here are illustrative. First, Lisa's testimony was relevant to the DNA evidence presented at trial; it lacked any unduly prejudicial effect against Lisa (i.e., by causing the jury to feel more or less sympathy for her) or Mulhern (i.e., by causing the jury to believe he was any more or less culpable for assaulting Lisa). Second, the State introduced the evidence, not Mulhern. While he had an opportunity to cross-examine Lisa on this testimony, there's nothing about its use here that was harassing or humiliating. Third, similar to the first point, this evidence simply went to providing more relevant facts to the jury with regard to the DNA, which was likewise relevant evidence that supported the State's case. And finally, it is unlikely that a victim will avoid reporting a crime or participating in a prosecution out of concern that her *lack* of sexual activity over a discrete period will be made public. Given that, had the circuit court excluded Lisa's testimony, that exclusion would seemingly have violated the purpose of the rape shield statute, to the extent that it promotes effective law enforcement and victim participation.

Accordingly, review is warranted for this Court to address whether this type of evidence even should fall under the rape shield statute. Simply because evidence references sexual activity or lack thereof does not mean it should always be governed by the rape shield statute. And as noted, the evidence here is relevant to the central issue whether Mulhern had vaginal intercourse with Lisa. It was not introduced to embarrass the victim, sidetrack the jury, or confuse the issues. Excluding such evidence not only contravenes the rape shield statute's purpose, it violates it.

C. Review is warranted because only this Court can modify or overrule its own precedent.

As the court of appeals noted, the State conceded that the evidence here violated the rape shield statute. But that concession is not a reason for this Court to reject review. While the State agreed below that the evidence was barred based on controlling case law, it did so because the court of appeals was bound by that law. And it did so to focus on harmless error, which it continues to believe must resolve in its favor. It did not concede, however, that this Court lacked the ability to revisit its rulings. It can, and to that end, both the State and Mulhern will have a full opportunity to argue this issue to this Court.

The State also notes that this issue involves interpretation of the rape shield statute. Because of that, this issue is one that the State could direct to the Legislature. That is true of most any issue implicating statutory language. It does not preclude this Court from revisiting its jurisprudence in interpreting the rape shield statute and evaluating how and whether it applies to the evidence at issue here. In addition, the questions presented ask this Court to clarify not just what evidence is or isn't implicated by the rape shield statute, but to provide guidance on how lower courts should apply the statute, which the Legislature can't do.

Finally, review is warranted to align the application of the rape shield statute with its purpose. To read the statute to bar the evidence offered in this case prevents victims from offering relevant evidence to corroborate their claims of sexual assault. That's the opposite of what the statute was designed to do. This case presents this Court with an opportunity to remedy that disconnect.

II. This Court should correct the court of appeals' errors in applying the harmless error doctrine and clarify how courts should apply this test in these cases.

This second issue, which concerns the court of appeals' application of the harmless error doctrine, implicates Wis. Stat. § (Rule) 809.62(1r)(c)2., because a decision by this Court will help develop, clarify, or harmonize the law and the question presented is a novel one, the answer to which will have statewide impact. If Lisa's testimony should be—and in fact is—barred by operation of the rape shield statute, Mulhern cannot get a new trial unless the error is reversible. Looking at the totality of the circumstances in this case, a new trial is unwarranted and is wildly disproportionate to the error and any harm it caused Mulhern.

In light of the standard enunciation of the harmless error test and the court of appeals' application of the facts of this case to it, this Court's review is warranted to offer direction on additional or alternative factors that courts should consider in cases involving the erroneous admission of rape shield evidence. In all events, that the court of appeals reversed a jury's guilty verdict after a fair trial in a serious sexual assault case warrants a second look by this Court.

The court of appeals, in applying the harmless error doctrine, correctly invoked the familiar test in *State v. Martin*, 2012 WI 96, ¶ 46, 343 Wis. 2d 278, 816 N.W.2d 270. (App. 109.) But it misapplied that test by ignoring important facts and factors in favor of less significant ones. The non-exhaustive factors courts may consider include: (1) the frequency of the error; (2) the importance of the erroneously admitted evidence; (3) the presence or absence of evidence corroborating or contradicting the erroneously admitted evidence; (4) whether the erroneously admitted evidence duplicates untainted evidence; (5) the nature of the defense;

(6) the nature of the State's case; and (7) the overall strength of the State's case. *Id.*

To start, in discussing the fifth and sixth factors, i.e., the nature of the defense and the nature of the State's case, the court of appeals framed the case as a "he said/she said," which reflects that the only evidence at trial was the victim's and defendant's recounting of events and disagreement over consent. (App. 110.) But that phrase—which has a loaded meaning and is arguably inappropriate to use in describing any sexual assault case—describes sexual assault cases that turn on consent. This wasn't a consent case. The issue was whether intercourse occurred. Lisa said that Mulhern raped her by forcing his penis in her vagina. Mulhern said that they engaged in consensual foreplay and that intercourse never happened. Accordingly, if intercourse occurred, it was nonconsensual.

And this wasn't a case in which the jury had nothing to consider other than the parties' credibility. Lisa's version of the story was corroborated by significant evidence that the court of appeals did not factor into its analysis. This evidence included testimony that she told police and a friend the next day the same details that she testified to, that she had significant injuries on her genitalia hours after her encounter with Mulhern, she had significant pain and bruising to parts of her body that she claimed Mulhern pinned during the assault, and the State identified Mulhern's DNA on her neck and male touch DNA in her vagina. The court weighed none of those things.

Hence, the "nature" of the case was far more than a so-called he-said, she-said. And the State's case was much stronger than one that was purely a credibility contest. But the court weighed none of those things in its analysis. More disturbingly, the court discounted the strength of the State's

case on the sexual assault charge because in its view, the jury didn't "believe" Lisa's testimony as to the strangulation. (App. 111.) Notwithstanding that strangulation generally is not proved based on the strangled victim's credibility, that view disregards the many reasons why the jury could have split its verdict that had nothing to do with the strength of the case on the sexual assault charge.

Likewise, the court didn't weigh that Mulhern, in contrast, had *only* credibility to offer, and that credibility was lacking given the many times he had to contradict his own testimony and given his unlikely explanation—Lisa was on board with his conduct until she was very suddenly and inexplicably not—of the encounter.

Moreover, the facts that the court of appeals did consider did not support its mandate. The court asserted that because Lisa's testimony was the only evidence of her lack of activity the week before, it was uncorroborated, and because of that (and based on the State's discussion in closing), it was important. (App. 110–111.) But the court disregarded that the third and fourth factors involving corroboration and cumulative untainted evidence wouldn't apply to erroneously admitted rape shield evidence. The rape shield is absolute: if evidence falls under the rape shield, it is barred. There can't be an "untainted" version or other evidence to corroborate it, unlike, for example, a statement obtained from a *Miranda* violation. For the same reasons, the frequency and importance factors aren't illustrative in cases involving the State's erroneous admission of a victim's lack of sexual activity.

To that end, the factors commonly identified in the harmless error test are non-exhaustive. Courts need not consider them all, and they can consider others. So, when answering the question of whether erroneously admitted rape

shield evidence caused reversible error, courts should consider whether the erroneously admitted evidence was contrary to the purposes of the statute. In other words, if evidence is relevant and not unduly prejudicial such that it permits a fair trial and does not operate to harass or humiliate the victim, that factor would seemingly demonstrate that the defendant was not harmed by the error.

Again, this Court's review is warranted to develop and clarify the law as it applies in these situations and to right the unquestionably wrong result in this case.

* * * *

It bears repeating: the court of appeals' reversal in this case throws out a jury verdict adjudicating Mulhern guilty in a sexual assault case, based on an alleged violation of a statute that's designed to protect victims. There is no correlation between the admission of the evidence here and any violation of Mulhern's rights or prejudicial effect to him. Accordingly, granting Mulhern a new trial under these circumstances results in a perversity: the rape shield statute is effectively punishing the victim by putting her through a new trial. This Court's review (and reversal) of the court of appeals' decision is vital.

CONCLUSION

The State respectfully requests that this Court grant this petition for review.

Dated this 3rd day of November 2020.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this petition conforms to the rules contained in Wis. Stat. § 809.62(4) for a petition for review produced with a proportional serif font. The length of this petition is 4539 words.

Dated this 3rd day of November 2020.

SARAH L. BURGUNDY
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.62(4)(b)

I hereby certify that:

I have submitted an electronic copy of this petition for review, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.62(4)(b) and 809.19(12).

I further certify that:

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

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

Dated this 3rd day of November 2020.

SARAH L. BURGUNDY
Assistant Attorney General

Index to the Appendix
State of Wisconsin v. Ryan Hugh Mulhern
Case No. 2019AP1565-CR

Description of document — Page(s)

State of Wisconsin v. Ryan Hugh Mulhern,
Wisconsin Court of Appeals,
Case No. 2019AP1565-CR,
Court of Appeals Decision,
dated Oct. 6, 2020 101–112

State of Wisconsin v. Ryan Hugh Mulhern,
Pierce Co. Circuit Court,
Case No. 2016CF255,
Excerpt of Transcript of Proceedings, Jury Trial,
dated Mar. 8, 2018 (R. 86:41–44) 113–116

APPENDIX CERTIFICATION

I hereby certify that filed with this petition for review, either as a separate document or as a part of this petition, is an appendix that complies with Wis. Stat. § 809.62(2)(f) and that contains, at a minimum: (1) a table of contents; (2) the decision and opinion of the court of appeals; (3) the findings or opinion of the circuit court necessary for an understanding of the petition; and (4) portions of the record necessary for an understanding of the petition.

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 3rd day of November 2020.



SARAH L. BURGUNDY
Assistant Attorney General

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.62(4)(b)

I hereby certify that:

I have submitted an electronic copy of this appendix, which complies with the requirements of Wis. Stat. §§ (Rules) 809.62(4)(b) and 809.19(13).

I further certify that:

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

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

Dated this 3rd day of November 2020.



SARAH L. BURGUNDY
Assistant Attorney General