STATE OF WISCONSIN

SUPREME COURT

Case No. 2020AP001157 – CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TERRY L. HIBBARD,

Defendant-Appellant.

PETITION FOR REVIEW

Megan Sanders-Drazen
State Bar No. 1097296

Wisconsin Defense Initiative
411 West Main Street, Suite 204
Madison, WI 53703
megan@widefense.org
(608) 620-4881

Attorney for Defendant-Appellant-Petitioner

TABLE OF CONTENTS

ISSUES PRESENTED

Terry Hibbard and his daughter, Tara,[1] were heroin users in need of a fix. Tara arranged to buy some from her dealer, Davion Poe. Hibbard, hoping for drugs himself, drove her to the deal. Tara then bought heroin from Poe, gave some of it to Hibbard, and used the rest. She died of an overdose that night.

Hibbard did nothing to set up the deal with Poe, didn't interact with Poe in any way before Poe sold Tara heroin, didn't help pay for the heroin, and didn't deliver the drugs he received from Tara to anyone else. Still, for giving Tara a ride to the deal, Hibbard was convicted of first-degree reckless homicide as a party to a crime. On these facts, two issues are presented:

1. **When a person helps a buyer effectuate a drug deal, do they aid and abet *just* the buyer or *both* the buyer and the dealer?**

   The circuit court and court of appeals said both.

2. **Are the Len Bias and party-to-a-crime statutes void for vagueness as applied to Hibbard?**

   The circuit court and court of appeals said no.

CRITERIA FOR REVIEW

Across Wisconsin, opioid users increasingly face prosecution for reckless homicide when their co-users

[1] This petition refers to the victim by her nickname.

overdose and die. *See generally* Emily O'Brien, Comment, *A Willful Choice: The Ineffective and Incompassionate Application of Wisconsin's Criminal Laws in Combating the Opioid Crisis*, 2020 Wis. L. Rev. 1065, 1082. Whether the Len Bias law permits this charging practice has been contested for years, with sweeping implications for overdose victims' families, defendants' futures, and Wisconsin's battle against a persistent public health threat. *Id.* at 1081-82.

Here, the court of appeals tackled the difficult question of how far aider-and-abettor liability reaches in the Len Bias context. *See State v. Hibbard*, No. 2020AP1157-CR, ¶¶30-33 (Wis. Ct. App. Sep. 21, 2022) (recommended for publication) (App. 3-18). But it failed to address, let alone resolve, urgent problems with the interaction between the Len Bias and party-to-a-crime statutes. The court of appeals' opinion is silent, for instance, on a key consequence of its analysis: buyers will be liable for dealers' crimes. Because the court of appeals charted new territory in this case, setting forth an interpretation of the statutes that raises as many questions as it answers, guidance from this Court is critical. Wis. Stat. § 809.62(1r)(c).

STATEMENT OF THE CASE AND FACTS

Hibbard took his case to trial, but the relevant facts were, and remain, undisputed.

In July 2017, Hibbard's daughter Tara spent the weekend with her ex-boyfriend in the Village of Sullivan. (113:145-48). While there, Tara texted with Hibbard

about getting drugs. (113:143-47). Tara also texted her dealer, Poe. (*See* 50:3; 113:148). Poe agreed to sell her heroin when she returned from Sullivan on Sunday. (*See* 50:3; 113:148).

On Sunday morning, Tara's ex drove her to a gas station in Milwaukee, where Hibbard was waiting for her. (113:149). Hibbard then drove Tara to Poe's location, and Tara met with Poe in his car. (*Id.*). After she bought the drugs she'd come for, Tara got back into Hibbard's car and the two left. (*Id.*).

Back home, Tara gave Hibbard a small amount of heroin and kept the rest for herself. (*Id.*). She died of an overdose overnight. (39:1-2).

In the aftermath of his daughter's death, Hibbard worked with the sheriff's department to identify Poe and engage him in controlled buys. (21:1-2; 23:2; 50:4; 113:153). Due in large part to Hibbard's cooperation, Poe was ultimately convicted of first-degree reckless homicide for selling Tara the heroin that killed her. (*See* 23:2; 114:9-10). He was sentenced for that crime to 18 years of imprisonment.[2] (*See* 114:9-10).

The same day Poe was sent to prison, the State filed a criminal complaint against Hibbard, alleging he too was liable for Tara's death—and charging him with

---

[2] After evidence closed at Hibbard's trial, the circuit court took judicial notice of Poe's conviction, as no one was sure whether a witness had testified to it. (114:9-10). There was no objection. (*See id.*). Poe's conviction and sentence were also undisputed during postconviction proceedings. (*See* 86:5).

the same crime he'd helped get Poe convicted of. (1:1-2; 21:2). The State later clarified that it was charging Hibbard as a party to Poe's crime. (22:1). Even later, it clarified that intended to prove Hibbard aided and abetted Poe (not that the two were co-conspirators). (113:7).

The case went to trial. (113; 114). After the State rested, defense counsel moved to dismiss, asserting that the State had not "made a prima facie case." (113:197-98). While defense counsel framed his motion a few ways, he eventually zeroed in on the State's aiding-and-abetting theory. If "Hibbard aided anyone," counsel explained, it was Tara "in her desire to acquire the drugs," not Poe in his desire to sell them. (113:205). The State disagreed. (113:201-05).

The circuit court held off on deciding the motion, saying it would look at the relevant jury instruction that night and consider the parties' arguments. (113:209). It noted, however, that while "a lot of people feel that this is not the type of case that the Len Bias law is designed to reach," its "inclination [was that] this case goes to the jury … and we'll see where we end up." (*Id.*).

While the parties and court discussed the jury instructions at length the next morning, there was no further mention of the motion to dismiss. (114:3-19). Thus, the court never explicitly ruled on it.

After closing arguments and instructions, the jury deliberated for just over half an hour before returning a guilty verdict. (46; 114:60, 62). Hibbard was later

sentenced to 10 years' imprisonment. (64:1-2; 115:43; App. 27-28).

At the postconviction stage, Hibbard raised three claims. (86:2-3). He moved the court to reverse his conviction because there was insufficient evidence to show he aided and abetted Poe, as opposed to Tara. (86:7-13). Alternatively, he moved the court to reverse his conviction on the grounds that the Len Bias law is void for vagueness if interpreted to encompass his conduct. (86:13-16). And finally, he sought sentence modification based on a new factor: the circuit court's reliance on misinformation regarding his addiction. (86:16-23).

After multiple rounds of briefing and a hearing, the postconviction court denied all three of Hibbard's claims. (85; 86; 87; 88; 89; 90; 91; 92; 96; 99; 116; App. 19-26). It first held that, since Hibbard made the deal happen by driving Tara to Poe, he aided and abetted Poe:

> …. [I]f this were both of them sitting at home … and [Tara] says … let's go get some heroin, and they kind of have a mutual plan … but maybe she had other ways of doing it and he could have opted out, that probably would not [be] … aiding and abetting.
>
> Here, she did not have the ability to purchase that heroin, because for whatever reason they set up a place that was a couple miles from her….
>
> And that's where [Hibbard] came in. He provided the vehicle. He is the one that … kind of put the wheels to further this transaction in

> process…. [H]e knew that Poe was going to be committing a criminal act, and he acted in furtherance of that conduct. He was aware … that a crime was being committed, and participated in its perpetration ….
>
> ….
>
> …. Without [Hibbard's] participation and assistance to [Tara] to getting there, she wouldn't get the heroin….

(116:21-23; App. 21-23).

After rejecting Hibbard's sufficiency claim, the postconviction court denied his sentence modification claim, finding no new factor. (116:23-26; App. 23-26). It concluded its oral ruling with a cursory denial of Hibbard's void-for-vagueness claim: "I don't think that the statute is unconstitutional in terms of what it allows a reasonable person to discern about their conduct approaching criminal conduct," the court explained. (116:26; App. 26). "[Y]ou … look at [the] presumption of constitutionality when you construe a statute. And when you read that, it's clear what is prohibited." (*Id.*; App. 26).

Hibbard appealed the postconviction court's sufficiency and void-for-vagueness rulings. The court of appeals affirmed in an opinion recommended for publication. *See Hibbard*, No. 2020AP1157-CR, ¶34 (App. 17-18). It first held that, based on the trial record, the jury could have concluded that Hibbard aided and abetted Poe by driving Tara to the drug deal. *Id.*, ¶¶20-21 (App. 11-12). "Hibbard's conduct falls within the text of the [Len Bias and party-to-a-crime] statutes," it explained,

even though he didn't "communicate directly with Poe" and even though he "wanted to obtain some of the drugs for his own use." *Id.*, ¶20 (App. 11). The court further concluded that the Len Bias and party-to-a-crime statutes are not unconstitutionally vague as applied to Hibbard. *Id.*, ¶¶30-33 (App. 16-17).

This petition follows.

ARGUMENT

I. This Court should grant review to resolve whether assisting a buyer in effectuating a drug deal aids and abets *only* the buyer or *both* the buyer and the dealer.

A. Introduction.

Wisconsin's drug laws, codified in ch. 961, draw a line between those who buy drugs for personal use (often due to addiction) and those who deal drugs and thus profit off of others' illicit drug use. *See* Wis. Stats. §§ 961.001(1r), (2). The legislature deemed the latter group more culpable and a greater "menace to the public health and safety." § 961.001(1r). Thus, it enacted statutes that treat those who "illicitly traffic" drugs more harshly than those "dependent on" them. *See* §§ 961.001(1r), (2). This disparate treatment isn't just manifest in the structure of the crimes and penalties ch. 961 sets forth; it is explicit in ch. 961's text. *See* § 961.001.

Case law building on the legislature's disparate treatment of buyers and dealers clarifies that a person

who participates solely in the buying side of a drug deal is not a party to the dealer's crimes. *See generally State v. Hecht*, 116 Wis. 2d 605, 342 N.W.2d 721 (1984); *State v. Smith*, 189 Wis. 2d 496, 525 N.W.2d 264 (1995). To hold otherwise, the Wisconsin Supreme Court has explained, would lead "the unfortunate individuals who are the ultimate users of drugs" to "be punished as severely as the distributors"—defying a basic aim of ch. 961. *Smith*, 189 Wis. 2d at 502-03.

Here, it's undisputed that the State proved Hibbard aided and abetted Tara in buying drugs. But whether Hibbard aided and abetted Poe in delivering those drugs is a thornier question.

The court of appeals concluded that Hibbard aided and abetted both Tara and Poe because their deal wouldn't have happened absent the ride Hibbard provided. But in reaching this conclusion, it sidestepped glaring problems with relying on a but-for analysis when assessing party-to-a-crime liability for drug crimes. Most notably, under the court of appeals' reasoning, a buyer is liable for her dealer's crimes, collapsing the explicit statutory distinction between the two.

The opinion below may spawn a surge of Len Bias prosecutions against those "unfortunate individuals who are the ultimate users of drugs," even though that outcome will contravene the expressed purpose of ch. 961. *See id.* It is difficult to square the reality of sweeping homicide prosecutions with ch. 961's targeted approach. Greater clarification of the interaction between

the Len Bias and party-to-a-crime statutes is therefore necessary.

B. Standard of review.

This case involves a jury verdict. Whether the evidence is sufficient to support a jury verdict is a question of law subject to de novo review. *State v. Smith*, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. This Court will uphold a jury verdict unless the evidence "is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *Id.* (quoting *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990)). But here there is no dispute about the evidence—only its legal significance—so the sufficiency issue is really one of statutory construction: under the Len Bias and party-to-a-crime statutes, did Hibbard aid and abet just Tara or also Poe? This Court will review that issue de novo, as the interpretation of a statute and its application to undisputed facts are questions of law. *State v. Pinkard*, 2005 WI App 226, ¶6, 287 Wis. 2d 592, 706 N.W.2d 157.

C. Governing law.

A handful of statutes and cases govern.

The statute Hibbard was convicted of violating is § 940.02(2)(a), the Len Bias law.[3] Under this provision,

[3] Len Bias was a rising basketball star whose overdose death spawned numerous "homicide by delivery of a controlled substance" statutes, including Wisconsin's. *State v. Patterson*, 2010 WI 130, ¶37, 329 Wis. 2d 599, 790 N.W.2d 909.

delivering illicit drugs to a person who uses them "and dies as a result" constitutes first-degree reckless homicide. *Id.* The purpose of the law has been framed as "deter[ring] drug traffickers"—an uncontroversial goal.[4] It has gained notoriety, however, for leading to harsh penalties for "the lowest people in the drug supply chain," rather than "upper echelon drug manufacturers and distributors."[5]

The other statute that enabled Hibbard's prosecution is Wis. Stat. § 939.05, which establishes party-to-a-crime liability. Relevant here is the subsection providing that a person who "[i]ntentionally aids and abets the commission" of a crime "is a principal and may be charged with and convicted of" that crime as if he committed it directly. §§ 939.05(1), (2)(b).

Determining which crimes the participants in a drug deal have committed, either directly or as a party to a crime, can be difficult. The first logical challenge is that buyers and dealers necessarily cooperate to make drug transactions happen. Does their cooperation implicate them in each other's crimes? The second problem is that many users sell drugs to support their habit, and

---

[4] Stephanie Grady, "'It's Been Used More and More,' But Is Wisconsin's Len Bias Law an Effective Deterrent to Opioid Abuse?" *Fox 6 Now* (Nov. 21, 2016, 9:14 PM), http://fox6now.com/2016/11/21/its-been-used-more-and-more-but-is-wisconsins-len-bias-law-an-effective-deterrent-to-opioid-abuse/.

[5] Drug Policy All., "An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane," 3 (Nov. 2017), https://www.drugpolicy.org/sites/default/files/dpa_drug_induced_homicide_report_0.pdf.

many dealers end up as users—undermining efforts at meaningful line-drawing.

Two Wisconsin Supreme Court cases, *Hecht* and *Smith*, offer helpful guidance in navigating these complexities. By contrast, the court of appeals' decision (the most recent addition to the scant body of relevant case law) muddies the waters.

Hecht considered whether a person who wasn't the buyer or the dealer in the drug deal at issue was nevertheless liable for the dealer's crime (possession with intent).

An undercover agent bought cocaine from Steven Hecht and then told him he had a friend who wanted to make a larger purchase. *Id.* The agent said he would pay Hecht for contacting a supplier. *Id.* Hecht didn't know a supplier, so he called his friend Virgil Vollmer, who did. *Id.* A deal was arranged. *Id.* at 608-09. Hecht and Vollmer met up with the agent and his drug-seeking friend (actually another agent). *Id.* at 609. Then Hecht left, as the supplier didn't want extra people around for the transaction. *Id.* The others drove to a prearranged location and found the supplier, cocaine in hand. *Id.*

For his role in arranging the deal, Hecht was convicted of possession of cocaine with intent to deliver as a party to a crime. *Id.* at 610. On appeal, he argued that the evidence was insufficient to support his conviction since he'd merely connected the buyer and supplier. *Id.* at 618. This Court was not persuaded. It held that Hecht aided and abetted the supplier by engaging with both the buyer and the supplier, by "put[ting] into motion the

wheels of a mechanism that would ultimately lead to" a transaction between the two, and by keeping "those wheels turning." *Id.* at 624. For the same reason, it also held Hecht liable as the supplier's co-conspirator. *Id.* at 625.

A decade later, in *Smith*, 189 Wis. 2d at 498, a different question of drug crime liability arose that again implicated the party-to-a-crime statute: is a drug sale a conspiracy between buyer and dealer?

Thomas Smith agreed to deliver a small amount of cocaine to a buyer for her personal use. *Id.* at 499-500. Before the deal could take place, the buyer called the police. *Id.* at 500. Smith was arrested and eventually pleaded guilty to conspiracy to deliver cocaine. *Id.*

On appeal, Smith argued that a standard "buy-sell agreement" cannot be a conspiracy and thus that his guilty plea was invalid. *Id.* This Court agreed. It explained that a conspiracy involves "at least two people, with each member subject to *the same penalty*." *Id.* at 501 (emphasis added). But the legislature has prescribed very different penalties for the crimes that buyers and dealers commit. *Id.* at 501-02. Thus, when a dealer delivers drugs to a buyer for her personal use, the two cannot be prosecuted as co-conspirators without flouting legislative intent. *Id.* at 502.

Smith did not address whether classifying a buyer and dealer as aiders and abettors of each other's crimes would similarly defy legislative intent. But it made clear that lawmakers considered dealers more blameworthy and dangerous than those buying drugs for personal use,

and thus that it enacted penal statutes with disparate penalties for the two groups. *Id.* As with conspiracy liability, using aider-and-abettor liability to punish a buyer for a dealer's wrongdoing undermines this dual penal aim.

In sum, *Hecht* shows that a person who provides ongoing assistance to both sides of a drug deal, in an effort to effectuate that deal, is a party to the dealer's crimes. *Smith* shows that the buyer herself is not.

The third relevant case is this one. The court of appeals' opinion reviews *Smith* and *Hecht*, deeming *Smith* largely irrelevant and *Hecht* roughly on point. It concludes that, like Hecht, Hibbard helped both sides of the deal and thus was a party to both sides' crimes. It ignores the *Hecht* court's focus on Hecht's actions (ongoing engagement with both buyer and supplier) and focuses instead on the *effect* of Hecht's actions (enabling the drug sale).

The court of appeals was silent on the basic fact about drug deals that makes party-to-a-crime liability so tricky in this realm: a dealer and a buyer need one another to effectuate a drug deal, so anyone who intentionally helps a dealer necessarily helps the buyer, and vice versa. The court of appeals was equally silent on the broader ramifications of this conundrum: there can be no distinction between the penalties applicable to the two sides of a drug deal if all it takes to bridge the gap is assistance rendered to one side.

In short, while *Hecht* and *Smith* provided guidance on what may and may not make a person a party to a

drug dealer's crimes, the court of appeals' decision confuses that guidance. This Court's input is necessary.

D. This Court should grant review to clarify whether Hibbard's one-sided involvement in a drug deal can trigger party-to-a-crime liability for the other side's crimes.

It defies ch. 961 to charge those on both sides of a drug transaction with the dealer's crimes. But the broad text of the party-to-a-crime statute does not, on its face, foreclose such charges. This is the fundamental tension in the statutes, and it's the key issue this Court should take up.

Hibbard's story presents the tension starkly. Hibbard remained, as a practical matter, on the buyer's side of the deal: he talked to Tara about getting drugs, drove her to buy them after she independently arranged a deal, and then used some of the drugs she purchased. But despite staying on the buyer's side, his conduct allowed Tara *and* Poe to consummate their deal. Tara bought drugs from Poe after Hibbard drove her to him, and Poe sold drugs to Tara after Hibbard drove her to him.

The court of appeals resolved this quandary by implicitly accepting that those on each side of a drug transaction are liable for the other side's crimes. Since Hibbard made both the sale and the purchase possible, the court concluded that he aided and abetted both Tara and Poe.

Of course, by that same logic, Tara also aided and abetted Poe. There is no drug sale without a buyer. Nothing in the court of appeals' analysis necessarily excludes the buyer from liability for the dealer's crimes.

Thus, it's unclear what becomes of *Smith* or the declaration of policy in ch. 961 now that the court of appeals has disregarded the buyer-dealer divide. And it's unclear how far its disregard reaches: will all parties involved in an ordinary drug deal (including the buyer and any third party assisting the buyer) now be liable as parties to the dealer's crime? The court of appeals' opinion offers no guidance here.

This Court should grant review to clarify the interaction between the Len Bias and party-to-a-crime statutes. More specifically, it should resolve the recurring question of whether a person who assists a buyer in effectuating a deal is a party to the dealer's crime (like the intermediary in *Hecht*) or simply liable for the buyer's crime (like the buyer herself in *Smith*).

These issues are not theoretical: given the frequency of opioid overdoses across the state and the increased use of Len Bias prosecutions to combat them, the criminal law's treatment of those involved in fatal drug deals is an everyday concern for lower courts, litigants, and the public. While a supreme court opinion this case would not answer every question these prosecutions raise, the straightforward facts and clear record here provide an ideal vehicle for resolving fundamental tensions in the statutes and case law—which aren't going away.

II. If this Court grants review and holds that Hibbard's conduct falls within the purview of the Len Bias and party-to-a-crime statutes, it should decide whether those statutes are void for vagueness as applied to Hibbard.

A. Introduction.

If this Court grants review and holds that Hibbard aided and abetted Poe in addition to Tara, it should further determine whether the Len Bias law is unconstitutionally vague as applied to Hibbard. On the one hand, there is some aiding-and-abetting conduct that falls squarely within the proscriptions of the Len Bias law (for example, if Hibbard had driven Poe to Tara's location instead of vice versa, there would be no question he aided and abetted Poe). But would a drug-seeking layperson who helps a fellow drug-seeker *get* drugs understand that his conduct qualifies as aiding and abetting the drugs' *delivery*? If not, then due process requires greater clarity.

B. Standard of review.

Statutes are presumed constitutional, and a party claiming otherwise must prove the challenged statute's unconstitutionality beyond a reasonable doubt. *State v. Jensen*, 2004 WI App 89, ¶12, 272 Wis. 2d 707, 681 N.W.2d 230. Whether Hibbard has met that burden is a question of law this Court will review de novo. *Id.*, ¶13.

C. Governing law.

Both the state and federal constitutions require that criminal statutes give "'fair notice" of the conduct they prohibit and "provide an objective standard for enforcement." *State v. Smith*, 215 Wis. 2d 84, 91, 572 N.W.2d 496 (Ct. App. 1997); *see also Bouie v. City of Columbia*, 378 U.S. 347, 350-51 (1964). A law that falls short of these imperatives is unconstitutionally vague, even if "there is some conduct that clearly falls within the provision's grasp." *Johnson v. United States*, 576 U.S. 591, 602-03 (2015).

The void-for-vagueness doctrine tackles two problems. *See id.* First is the notice problem: unduly vague penal statutes do not reasonably convey their proscriptions so that people "of ordinary intelligence … may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Second is the delegation problem: a law without "explicit standards" for enforcement "delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis." *Id.*

Due process has long required that criminal statutes avoid these quandaries with reasonable clarity and specificity. "A criminal statute is not vague if 'by the ordinary process of construction, a practical or sensible meaning may be given to [it]." *State v. Jensen*, 2004 WI App 89, ¶13, 272 Wis. 2d 707, 681 N.W.2d 230. If, however, that ordinary process reveals "hopeless indeterminacy," then the statute cannot be the basis for a conviction or sentence. *See Johnson*, 576 U.S. at 598.

D. If Hibbard's conduct made him a party to Poe's crime, then this Court should consider whether the Len Bias and party-to-a-crime statutes are void for vagueness as applied to Hibbard.

The lower courts' construction of the Len Bias and party-to-a-crime statutes implicates both the notice and enforcement concerns underpinning the vagueness doctrine.

Notice

The Len Bias statute bars the "manufacture, distribution or delivery" of drugs that cause an overdose death—not their purchase or receipt. § 940.02(2)(a). The relevant part of the party-to-a-crime statute expands Len Bias liability by making those who aid and abet the "manufacture, distribution or delivery" of drugs just as liable for a resulting overdose death as the manufacturer, distributor, or deliverer himself. But the State would have these provisions ensnare someone solely on the receiving end of a drug deal—making a drug recipient liable for first-degree reckless homicide if the deal leads to another recipient's overdose death. That means an layperson could reasonably believe he's committing simple possession (a nonviolent misdemeanor or low-level felony) when in fact he's committing reckless homicide (one of the most serious crimes on the books).

This distinction matters from a notice standpoint: users whose addiction regularly leads them to possess illicit drugs may nevertheless avoid endangering their

loved ones or exposing themselves to a serious felony conviction. This Court should consider whether deeming such users just as guilty of reckless homicide as the dealers profiting from their addiction is an unconstitutionally unforeseeable result.

Enforcement standards

This Court should also consider whether the lower courts' construction of the Len Bias and party-to-a-crime statutes undermines objective enforcement. If a person need not deliver drugs or engage with the delivery except by driving the buyer to the deal, what other kinds of buyer-side involvement will incur Len Bias liability? How will a factfinder know where to draw the line? Letting police, prosecutors, judges, and juries draw make these decisions could impermissibly delegate critical policy decisions—violating due process.

One final point. The void-for-vagueness issue in this case is admittedly unusual for its connection to two statutes. The vagueness problem arises in their interplay: the Len Bias and party-to-a-crime statutes are imprecise about what conduct qualifies as aiding and abetting a fatal drug delivery, and about how those enforcing the statutes should decide whether a particular actor ran afoul of the statutes' proscriptions. Thus, Hibbard does not ask this Court to consider striking down either statute—he asks it to review whether they are unconstitutional, together, as applied here.

CONCLUSION

The questions of statutory construction this case raises are complex, despite the surface simplicity of the texts at issue. The court of appeals resolved these questions in an opinion recommended for publication. But, in doing so, the court of appeals side-stepped urgent problems with its interpretative approach. Because the persistence of the opioid epidemic all but ensures that circuit courts and litigants will confront these problems again and again, this Court's review is warranted.

Dated this 17th day of October, 2022.

Respectfully submitted,

Megan Sanders-Drazen
State Bar No. 1097296

Wisconsin Defense Initiative
411 West Main Street, Suite 204
Madison, WI 53703
megan@widefense.org
(608) 620-4881

Attorney for Defendant-Appellant-Petitioner

CERTIFICATION AS TO FORM AND LENGTH

I certify that this brief meets the form and length requirements of s. 809.19(8)(b) and (c) for a brief. The length of this brief is 4,541 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with 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; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically 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 and filed this 17th day of October, 2022.

Signed:

_____

Megan Sanders-Drazen
State Bar No. 1097296

CERTIFICATION AS TO ELECTRONIC COPY

I certify that the copy of this petition for review electronically filed in the Wisconsin Supreme Court is identical to the paper copy of this petition for review previously filed in the Wisconsin Supreme Court.

Dated and filed this 17th day of October, 2022.

Signed:

Megan Sanders-Drazen
State Bar No. 1097296