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SUPREME COURT

The Supreme Court of Wisconsin

20-AP-1981-CR

State of Wisconsin,
Plaintiff-Respondent

v.

Sergio Moises Ochoa
Defendant-Appellant-Petitioner

Appeal from The Circuit Court of Sheboygan County
The Honorable Rebecca L. Persick, presiding

Petition for Review

Steven Roy
Attorney for the Defendant-Appellant
Wisconsin State Bar No. 1115155
1310 O'Keeffe Ave. #315
Sun Prairie, WI 53590
608.571.4732
Steven@stevenroylaw.com

Statement of Issues

1. Both the United States Constitution and the Wisconsin Constitution protect an accused's fundamental right to present a defense. Like most of our rights, this right is not absolute, and is subject to the application of evidentiary rules. Nevertheless, the application of evidentiary rules can deny the accused a fair trial.

   In a trial where the only issue was whether the Mr. Ochoa acted in reasonable self-defense, did the circuit court deny Mr. Ochoa the right to present a defense when the circuit court would not allow evidence of the deceased's prior violent acts, expert testimony regarding use of force, and expert testimony regarding the implications of the deceased's threats?
2. Ordinarily, a circuit court has discretion to exclude testimony. When the circuit court refused to allow Mr. Ochoa to relate non-testimonial imperative statements of the deceased, it relied on an unpublished decision of the court of appeals which had already been overturned by this Court. Can a circuit court possibly properly exercise its discretion when the basis for the exercise of discretion has been overturned?
3. The sole issue at trial was whether Mr. Ochoa acted in reasonable self-defense. The pattern jury instruction for first-degree intuitional homicide with lesser included charges fails to instruct the jury of the statutory definition of a reasonable belief. Did the trial court err when it refused to include this definition in the jury instruction?

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Reasons to Accept Review

The purpose of the court of appeals is to correct the errors made by circuit courts. The circuit court made egregious errors of law which denied Mr. Ochoa fair trial. The court of appeals refused to correct these blatant errors, and in doing so, issued a precedent setting opinion which directly conflicts with many of this Court's prior decisions. These conflicts strike at two of the fundamental pillars of the criminal justice system–an accused's right to present a defense, and the duty of a judge to accurately and completely inform the jury of the applicable law.

This Court should grant review to quash this conflict before these mistakes are repeated and reaffirm these fundamental aspects of our justice system.

Statement of the Case

Sergio Ochoa might not have been born in Wisconsin, but he embodies the best of qualities of our state. (R.494:4). Mr. Ochoa was a law abiding citizen; he did not even have a parking ticket prior to this incident. (R.409:7; 503:18). He is well mannered and respectful. (R.503:17). Mr. Ochoa is passionate, hardworking, and friendly. (R.503:12). Like many Wisconsinites, Mr. Ochoa grew up shooting firearms, and obtained a concealed carry permit. (R.494:4, 36-44).

Most of all, Sergio Ochoa is a family man. His family ran a beef and dairy farm, this work ethic was passed to Mr. Ochoa who would work 55 hour weeks to build a better life for his family. He has always taken care of his parents, siblings, and children. (R.503:10). While Sergio did divorce his first wife, he never abandoned his children. He bought them a house, and sent money for them to attend private school. (R.503:10, 7).

Mr. Ochoa had know the deceased most of his life. He would go to rodeos with is family and see his cousin L.G. and his cousin's friend F.L. (R.494:7-8). At the time, Sergio and L.G. were not particularly close. (R. 494:7-8). When he was 18, Sergio moved to California. (R.494:9). When Sergio arrived in the United States, L.G. picked him up at the airport. (R. 494:9). L.G. was the only person Sergio knew in California. (R.494:10). L.G. took Sergio in to his home, and helped Sergio get a job. (R.494:10). Over the next two years, Sergio and L.G. became even closer than cousins; they were each others' best friends, living together working together, and socializing together. (R.494:9-11).

After Sergio met his first wife, they moved back to Mexico. (R.494:11-12). Eventually, Sergio and his wife divorced, and

Sergio remarried. (R.494:17). Mr. Ochoa had visited L.G. in Oostburg, and fell in love with the town as it was a nice community to work and raise a family. (R. 494:18). While Mr. and Mrs. Ochoa were looking for their own apartment in Oostburg, they stayed with L.G.. (R. 494:18-19).

Over the years, Mr. Ochoa and L.G. remained very close raising their families in Oostburg; however, by the spring of 2017 L.G. had moved to Milwaukee for work and Sergio was working long hours, causing them to see each other less often. (R. 494:19-30). Nonetheless, Mr. Ochoa continued to drive L.G.'s daughter to school daily throughout the 2016-2017 school year to help L.G.'s family and because their daughters were close in age. (R. 494:19-30).

Mr. Ochoa was a regular church-goer, and raised his children in this community. (R.494:32). As L.G. was Sergio's closest male relative living in the United States, L.G. was Mr. Ochoa's son's godfather, and Mr. Ochoa had invited L.G. to continue to be his son's godfather at his First Communion. (R. 494:32).

But L.G. had a dark side. At the rodeos and other community events, Sergio witnessed L.G. and F.L. engage in "pre-emptive, violent and brutal attacks" after a night of drinking. (R. 108:2). L.G. and F.L. would use unconventional weapons such as rocks and beer bottles as well as using an electrical wire used to shock bulls on one occasion. (R.108:2).

In February of 2017, Mr. Ochoa saw L.G. ingest a powdery white substance in Mr. Ochoa's home. (R. 74:3). Mr. Ochoa believed the substance to be cocaine, and told L.G. to leave his house because he did not want drugs around his children. (R.74:3; R.494:32). After this incident, Mr. Ochoa decided L.G.

would not be a good godfather to his son, and made arrangements for his father to take L.G.'s place. (R.494:33).

In July of 2017, Mr. Ochoa's sister and her family visited Mr. Ochoa's family. (R.494:64). It was their first time visiting from Mexico despite Mr. Ochoa living in the United States for over a decade. Mr. Ochoa was ecstatic to have his sister, brother-in-law and nieces and nephews visit. (R.494:64-65). On Saturday, July 29, Mr. Ochoa finished working around 2 p.m. and was excited to return home to share a meal with his extended family. (R. 494:67-68). After an early supper, Mr. Ochoa caught up with his sister, and they called their parents in Mexico. (R.494:70-72).

Around 10:30, Mr. Ochoa and his bother-in-law went to L.G.'s home to bring over L.G.'s inhaler as well as beer and rum. (R.494:77-78). A few minutes after Mr. Ochoa arrived, L.G. returned home with F.L.. (R. 494:85). Mr. Ochoa noticed L.G. seemed to be under the influence of alcohol. (R. 494:86).

L.G. was happy and excited to see Mr. Ochoa. (R.494:85). L.G. asked Mr. Ochoa to accompany him to a back bedroom, where L.G. began to inhale lines of cocaine. (R.494:88). L.G. told Mr. Ochoa to come back later that night to discuss something important. (R. 368:2). Mr. Ochoa told L.G. he could not because of his plans with his family. (R. 368:2). L.G. was adamant insisting Mr. Ochoa return as L.G. was working in Milwaukee and did not know when he would return to Oostburg. (R.368:2-3). Mr. Ochoa and his brother-in-law then drove home. (R.494:90).

Mr. Ochoa had never seen his cousin make such a serious request. (R.497:33-34). When he woke up in the middle of the night, his cousin's request kept him from going back to bed. (R. 497:34). Mr. Ochoa got dressed and got ready to drive to his cousin's house. (R.497:34-35). Due to a number of robberies in

the Oostburg area and the late time of night, Mr. Ochoa lawfully carried his pistol with him. (R.497:36).

When Mr. Ochoa entered his cousin's home, he saw L.G. snorting something, and F.L. "cleaning" or pinching his nose. (R.497:38-39). As Mr. Ochoa and L.G. talked, L.G. became more aggressive. (R.497:40). L.G. demanded to know "why the fuck [he] hadn't gone to visit him before and why the fuck [he] hadn't gone looking for him before". (R.497:41). Then L.G. demanded Mr. Ochoa explain "why the fuck [Mr. Ochoa] had decided not to have him be the godfather for [Mr. Ochoa's] son at his First Communion". (R. 497:42).

When Mr. Ochoa told L.G. the reason he had revoked his cousin's role as Sergio Jr.'s godfather was because of L.G.'s life choices and drug use, L.G. "exploded like a bomb". (R.497:42). L.G. began to exchange glances with F.L. who was opening and closing his pocketknife. (R.497:43). L.G. started to yell at Mr. Ochoa and F.L. kept yelling "you're gonna get fucked up" at Mr. Ochoa. (RR.497:44; 85:4-9). Mr. Ochoa believed F.L. was threatening to kill him. (R.497:45). Mr. Ochoa tried walking around the home and deescalating the situation. (R.497:46-47). Mr. Ochoa tried to leave through the kitchen door, but couldn't turn the door knob. (R.497:50). L.G. came behind Mr. Ochoa with a knife in his hand, and yelled "where are you going". (R.497:50).

Mr. Ochoa was able to retreat to the living room. (R.497:54). F.L. loudly yelled "you're done", lifted his shirt and reached toward his waist. (R.497:57). Thinking F.L was about to draw a weapon, Mr. Ochoa drew his weapon and fired three times. (R. 497:57-8). L.G. then charged at Mr. Ochoa and lunged at Mr. Ochoa; Mr. Ochoa rotated his body and shot L.G. three or four times. (R. 497:59).

Mr. Ochoa left the residence, and intended to go directly to the Sheboygan police station. (R.497:66). He mistakenly thought the court house was the police station, and first drove there. (R. 497:66). After realizing the court house was not the police station, Mr. Ochoa corrected his course and drove to the police department. (R.497:75-76). Mr. Ochoa pressed the intercom at the police station and wanted to explain who he was and what happened but was promptly arrested. (R.497:77-82).
A criminal complaint charging him with two counts of First Degree Intentional Homicide was filed on August 8, 2017. (R. 4:1). A preliminary hearing was held on August 28, 2017. The circuit court found there was probable cause, and Mr. Ochoa was bound over. (R. 458:58).

Mr. Ochoa gave notice of nine expert witnesses it expected to testify. (R. 84:1-3) Three of the witnesses were also named by the state. (R. 84:1). One witness was employed by the state of Wisconsin Laboratory of Hygiene. (R.84:1). The State raised relevancy and *Daubert* challenges to the other six defense experts. (R.100:1-10; R.147:1-7). After conducting two days of *Daubert* hearings, the circuit court determined it would not let Mr. Marty Hayes, Mr. Alfonso Villaseñor, or Mr. Conrad Zvara testify. (R.477: 34-35, 38).

Mr. Ochoa also sought to introduce *McMorris* evidence. (R.107; R.108:1-3). The circuit court determined it would not allow the *McMorris* evidence to be presented. (R.477:24-30).

The case proceeded to trial, and Mr. Ochoa was acquitted of both counts of First Degree Intentional Homicide and Second Degree Intentional Homicide, but was convicted of two lesser included counts of First Degree Reckless Homicide. (R.394:1; R.395:1). Mr. Ochoa was sentenced on March 13, 2020. On each count, the circuit court imposed 12.5 years incarceration and five

years of extended supervision to be served consecutively. (R.435:1). Mr. Ochoa filed a timely notice of appeal on March 20, 2020. (R. 442:1-2). A timely notice of appeal was filed on November 24, 2020. (R.452:1). On June 30, 2022, the Court of Appeals issued a published decision which upheld the circuit court's decisions to exclude expert testimony, *McMorris* evidence, non-hearsay testimony, and the court's refusal to fully instruct the jury in the law of self-defense.

Argument

I. The court of appeals's published decision conflicts with decades of controlling precedent from this court as well as the United States Supreme Court.

Frequently appellants question whether lower courts have appropriately exercised their discretion in making evidentiary decisions. However, an appellant may claim they were denied the fundamental right to present a defense.[1] This claim is one of constitutional fact reviewed without deference to the lower court. *State v.* Pulizzano, 155 Wis. 2d 633, 648, 456 N.W.2d 325 (Wis. 1990); *State v. Pittman*, 174 Wis. 2d 255, 275 496 N.W.2d 74 (Wis. 1993); *State v. St. George*, 2002 WI 50 ¶49, 252 Wis. 2d 499, 643 N.W.2d 777 (Wis. 2002); *State v. Wilson*, 2015 WI 48, ¶47, 362 Wis. 2d 121, 864 N.W.2d 52 (Wis. 2015).

This deferential standard of review comes with additional burdens. On review, the appellant must demonstrate the evidence *could* have been admissible, and the refusal to admit the evidence denied the accused a fair trial. *State v. Wilson*, 2015 WI¶47-48. This articulation and deferential standard comport with cases from the Supreme Court of the United States.

In *Chambers v. Mississippi*, the Court was asked to review if the exclusion of witness testimony of a their-party's confession violated Chambers's right to present a defense. *Chambers v. Mississippi*, 410 U.S. 284, 298, 93 S. Ct. 1038, 35 L.ed. 2d 297 (1973). There was no dispute, the statements Chamber's sought to have admitted were hearsay, and as Mississippi did not allow for an exception to the general prohibition against hearsay for statements against penal interest, the statements were rationally

[1] The Constitutional right to present evidence is grounded in the confrontation and compulsory process clauses of Article I, Section 7 of the Wisconsin Constitution and the Sixth Amendment of the United States Constitution.

excluded. *Id.* at 298-299. The Court determined the statements *could* have been admitted as they bore persuasive assurances of trustworthiness, and they were critical for Chambers's defense. *Id.* at 302. The Court gave no deference to the lower courts as it determined Chambers had been denied a fair trial. *Id.*

In *Rock v. Arkansas*, the Court was again asked if the application of a rational evidentiary rule denied the defendant the right to present a defense. *Rock v. Arkansas*, 483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed. 2d 37 (1987). Arkansas had filed a motion to exclude testimony which had been remembered only after two hypnosis sessions. *Id.* at 47. After hypnosis, Rock remembered she did not have her finger on the trigger of the gun. A firearms expert examined the gun, noting it was defective and prone to fire when hit or dropped, without the trigger being pulled. *Id.*

The Court noted the exclusion of post-hypnosis testimony largely prevented Rock from testifying about the events which occurred the day of the shooting, despite corroboration from other witnesses. *Id.* at 57. This exclusion violated Rock's right to present a defense. The Court noted the reliability concerns of hypnotically refreshed testimony, but found the reliability concerns were secondary to Rock's fundamental right. The traditional means for assessing accuracy, cross-examination, expert testimony, and cautionary instructions, are sufficient to cure any concerns of reliability. *Id.* at 107.

Whether a defendant had been denied their right to present their defense is not a new or novel body of law. Both this Court and the Supreme Court of the United States have dealt with this issue on numerous occasions. The standard of review is well established. The court of appeals's decision in this case ignored the *de novo* standard of review, and only reviewed the circuit

court's exercise of discretion. *State v. Ochoa*, 2020AP1981-CR ¶20 (Appendix 1).

> We conclude the trial court's decision to exclude the McMorris evidence was not erroneous. The trial court considered the applicable law, applied the pertinent facts, and reached a reasonable determination. See State v. Payano, 2009 WI 86, ¶51, 320 Wis. 2d 348, 768 N.W.2d 832.
>
> *State v. Ochoa*, ¶29

> The trial court's decision as to Hayes was not erroneous because it reached a reasonable determination after considering the specific facts and applying the correct law. It had valid concerns about the reliability of Hayes's opinions and acted within its gatekeeper function to exclude this witness.
>
> *State v. Ochoa*, ¶35

> Excluding Villaseñor under WIS. STAT. § 907.02 as irrelevant was a reasonable decision by the trial court.
>
> *State v. Ochoa,* ¶37

> The trial court's decision on Zvara was reasonable. Zvara's testimony relied on Hayes's opinion, which was excluded as unreliable. It logically follows that any opinion Zvara formed based on Hayes's opinion is also unreliable. As for Zvara's testimony that did not rely on Hayes's opinion, the trial court saw it as irrelevant. Zvara focused on use-of-force principles. Here, the jury was tasked with assessing whether Ochoa's thoughts and actions were reasonable. The trial court acted reasonably in excluding testimony it found to be both unreliable and irrelevant. As noted, it had "wide latitude to exclude evidence that is repetitive …, only marginally relevant or poses an undue risk of harassment, prejudice, [or] confusion of the issues." Crane, 476 U.S. at 689-90 (alteration and omission in original; citation and internal marks omitted).
>
> *State v. Ochoa* ¶39

> In summary, the trial court's determination that three of Ochoa's expert witnesses did not meet the standard under WIS. STAT. § 907.02(1) was not erroneous, and Ochoa has

> therefore failed to establish their exclusion was a violation of his constitutional right to present a defense.
>
> *State v. Ochoa*, ¶40

The court of appeals refused to apply the correct standards. While it cited to *State v. St. George*, and its test for determining whether a defendant's rights have been violated, the court has utterly failed to acknowledge its review of the circuit court is not conducted with any deference to the circuit court. The question was never "was the circuit court's decision reasonable". They are whether the evidence could have been admitted, and if the testimony was critical to Mr. Ochoa's defense. The court of appeals opinion defies these long standing standards of review. The court of appeals is not free to disregard the precedents of this court. Review is necessary to heal the rift in our Constitutional case law caused by the court of appeals's egregious opinion.

II. The court of appeals's decision upholding the circuit court's refusal to accurately instruct the jury in the law of self-defense violates this Court's precedents regarding the standard of review for jury instructions, and the law of self-defense.

A. This Court's precedents clearly establish Mr. Ochoa was entitled to a full and accurate instruction on the law of self defense

Wisconsin's privilege of self-defense is codified in Wis. Stat. 939.48. A person may intentionally use deadly force to prevent what the person reasonably believes to be an unlawful interference with they person. A belief can be reasonable, even if it mistaken. Wis. Stat. 939.22(32); *State v. Stietz*, 2017 WI 58 ¶11, 375 WIs. 2d 572, 895 N.W.2d 796 (Wis. 2017); *Maichle v. Jonovic*, 69 Wis. 2d 622, 628, 230 N.W.2d789(Wis. 1975).

Defendants are not automatically entitled to an instruction on self-defense, they bear a burden of production. *State v. Head*, 255 Wis. 2d 194, 246, 648 N.W.2d 413 (Wis. 2002). A defendant must produce "some" evidence of actual belief they were in imminent danger or death or great bodily harm. *Head*, at 251. This is a low bar; the "some evidence" standard is satisfied even when the evidence is weak, insufficient, inconsistent, of doubtful credibility or slight. *Stietz*, ¶¶16-17. Even when a defendant is mistaken on the legality of the deceased's bodily interference, they are still entitled to an instruction of self-defense. *State v. Johnson*, 2021 WI 61, 397 Wis. 2d 633, 961 N.W.2d 18 (2021).

No party has ever claimed Mr. Ochoa has failed to meet this burden of production. F.L. and L.G. had a long history of violent attacks; and L.G. was increasingly aggressive with Mr. Ochoa. Mr. Ochoa observed F.L. ingesting cocaine, making threatening gestures with a knife, and making verbal threats.

When Mr. Ochoa tried to retreat, L.G. came behind him with a knife. Mr. Ochoa believed he saw F.L. reach for his knife. Only after Mr. Ochoa was unable deescalate the situation and retreat did he result to deadly force to prevent F.L. and L.G. from stabbing him. Mr. Ochoa satisfied his burden of production and was entitled to a full and accurate instruction on self-defense.

B. The court of appeals applied a deferential standard of review to the circuit court's analysis of the requested instruction. Whether the instruction accurately states the law is a question reviewed *de novo*.

While a circuit court has wide discretion in issuing jury instructions, it must do so in a manner which fully and fairly informs the jury of the rule of law applicable to the case. *State v. Dix*, 86 Wis. 2d 474, 486, 273 N.W.2d 250 (Wis. 1979). When the jury instructions are challenged as not correctly informing the jury of the law applicable to the charge, the challenger has presented a question of law appellate courts review de novo. *State v. Neumann*, 2013 WI 58 ¶89, 348 Wis. 455, 832 N.W.2d 560 (Wis. 2013); *State v. Gonzalez*, 2011 WI 63 ¶22, 335 Wis. 2d 270, 802 N.W.2d 454 (Wis. 2011); *State v. Ferguson*, 2009 WI 50 ¶9, 317 Wis. 2d 586, 767 N.W.2d 187 (Wis, 2009); *Peplinski v. Fobe's Roofing, Inc.*, 193 Wis. 2d 6, 23-24, 531 N.W.2d 597(1995).

Below, Mr. Ochoa challenged whether the court's jury instruction was a correct statement of law. The trial court refused to instruct the jury on the statutorily defined term of "reasonably believes". While the instructions given frequently mention a defendant's reasonable beliefs, it never informs the jury a belief may be reasonable even if it is mistaken.

The court of appeals failed to apply the correct standard of review. Legal questions are reviewed *de novo*, not for an erroneous exercise of discretion.

> What is clear, however, is that the trial court's decision to give the pattern instruction was not an erroneous exercise of discretion because this instruction, as a whole, provided the jury with an accurate instruction as to the law of self-defense under the facts of this case.
>
> *State v. Ochoa*, ¶60

The court concluded as the jury instructions repeatedly use the term reasonable belief, and were instructed to consider the beliefs from a reasonable person in Mr. Ochoa's situation, the instructions were complete. But juries are not presumed to add further elements to incomplete instructions they receive. *State v. Perkins*, 2001 WI 46 ¶44, 243 Wis. 2d 141, 626 N.W.2d 762 (Wis. 2001).

The court of appeals was determined to uphold the circuit court's refusal to fully instruct the jury in the law of the case. To do so, it had to violate well established, long standing precedent of this court. Review is necessary to halt this erosion of basic principles of appellate review.

C. The Court of appeals confusingly conflates harmless error and the burden of production, and shifted the burden to Mr. Ochoa on each issue in spite of this court's prior precedents.

Errors in jury instructions are still subject to harmless error review. *State v. Paulson*, 106 Wis. 2d 96, 108, 315 N.W.2d 350 (1982). The State, the beneficiary of this error, bears the burden of demonstrating this error was harmless beyond a reasonable doubt. *State v. Harvey*, 2002 WI 93 ¶41, 254 Wis. 2d 442, 647 N.W.2d 189 (Wis. 2001). If the State could demonstrate there were no beliefs which Mr. Ochoa held which were mistaken, or any mistake was undoubtably unreasonable, the circuit court's error would be harmless.

Mr. Ochoa does not believe he was mistaken in his assessment was in imminent danger or in his determination deadly force was necessary to save his life. Given he was unable to fully inform the jury on principles of self-defense, the decedents violent past, and the nature of the threats made by F.L. and L.G., it is easy to see how a jury could conclude Mr. Ochoa was mistaken about his assessment.

Rather than attempting to make a futile harmless error argument the State duped the court of appeals into believing Mr. Ochoa had a burden to produce some mistake in order to justify a complete instruction of the law. But once Mr. Ochoa had placed self-defense at issue, the court was required to fully and accurately instruct the guy on self-defense, and the State was required to prove Mr. Ochoa did not lawfully act in self-defense beyond a reasonable doubt. *Head* at ¶106-107. Whether there was some mistake, and whether that mistake was unreasonable is the State's argument to make, not Mr. Ochoa's.

The court of appeals's confused reasonings and faulty logic threaten a bedrock principle of criminal law–the State must prove every element of its case beyond a reasonable doubt. This Court should grant review to halt this slippery slope before ay other decision is based on this baffling decision.

III. The failure to fully instruct a jury on self-defense is likely to reoccur. This Court must intervene to prevent further miscarriages of justice.

In 20% to 33% of shooting cases where law enforcement is the shooter, the law enforcement officer has misperceived the threat. In other words, professionals who are extensively trained to evaluate threats in tense situations are wrong in a full third of incidents. (R.490:42). In studies surveying civilians using deadly force in situations where they believed their lives to be threatened, civilians tend to make the same mistakes as law enforcement, but at a higher frequency. Given law enforcement's extensive training in this situations, this result is expected.

For an unknown reason the pattern jury instruction read to the jury does not contain the information a belief may be reasonable even if it is mistaken. Wis JI-Crim 1016. Neither the State or the court of appeals contended this definition is an inccurate statement of law. In August of 2021, Wis JI-Crim 1014 was updated to conform to the language found in Wss. Stat. 939.22(32), and now explicitly states a belief may be reasonable even though mistaken, but Wis. JI-Crim 1016 and WIs. JI-Crim 1017 were inexplicable left untouched.

It is naive to think Wisconsin's citizens will never need to utilize deadly force in instances of self-defense. Given the ubiquity of the use of pattern jury instructions, the circuit court's error is likely to be repeated. Further, our jury instructions are inconsistent on the law of self-defense. Similarly situated defendants will be subject to differing legal standards. The court of appeals had an opportunity to correct this inexplicable error. Instead, the court of appeals compounded the error. It now falls to this Court to ensure our state's civilians and law-enforcement

are given the full protection of the law in cases where they believed they needed to use deadly force to protect themselves.

Conclusion

For the foregoing reasons, Mr. Ochoa respectfully request this Court grant review.

Dated: Monday, August 1, 2022

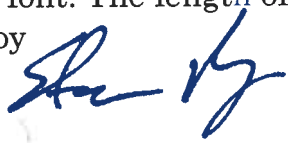
Respectfully submitted,

Steven Roy
Attorney for the Defendant-Appellant
Wisconsin State Bar No. 1115155
1310 O'Keeffe Ave. #315
Sun Prairie, WI 53590
608.571.4732
Steven@stevenroylaw.com

CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (8)

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 4,460 words.

Signed: Steven Roy

Signature 

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I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (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.

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