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SUPREME COURT**

STATE OF WISCONSIN

IN SUPREME COURT

CASE NO. 2021AP001252-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DANNY ARTHUR WRIGHT,

Defendant-Appellant-Petitioner.

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PETITION FOR REVIEW

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## ISSUE PRESENTED

In *State v. Dobbs*,<sup>1</sup> this Court held that the heightened reliability standard set forth in Wis. Stat. § 907.02(1) does not apply to “expositional” testimony. Expositional testimony is expert testimony that offers an educational lecture on general principles, but does not apply those principles to the facts of the case. Alternatively, “[i]f the expert is testifying in the form of an opinion, he or she is applying the principles and methods to the specific facts of the case and must do so reliably.” The issue presented in Wright’s case is this:

Whether a detective who testified generally about Tasers and stun guns *but also* applied his background and experience to the specific facts of Wright’s case offered merely expositional testimony not subject to § 907.02(1)’s heightened reliability standard because he did not “opine on the ultimate issue of whether the [ZAP Stick] used by Wright satisfied the statutory definition of dangerous weapon?”<sup>2</sup>

The circuit court denied Wright’s motion in limine to prevent the detective from offering expert testimony and the court of appeals affirmed.

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<sup>1</sup> *State v. Dobbs*, 2020 WI 64, ¶¶35-42, 392 Wis. 2d 505, 945 N.W.2d 609.

<sup>2</sup> See *State v. Wright*, No. 2021AP1252-CR, unpublished slip op., ¶24 (WI App May 16, 2023). (Pet. App. 15).

*See State v. Wright*, No. 2021AP1252-CR, unpublished slip op. (WI App May 16, 2023). (Pet. App. 3-20). This Court should grant review and reverse.

### **CRITERIA SUPPORTING REVIEW**

Whereas *Dobbs* held that Wis. Stat. § 907.02(1) did not alter Wisconsin's practice of allowing expositional testimony, *Wright's* case presents this Court with an opportunity to clarify the line between expositional testimony and expert opinion testimony that is subject to § 907.02(1)'s heightened reliability standard. Further, the court of appeals' decision below redefines expert opinion testimony so narrowly, and expositional testimony so broadly, that only testimony that opines on an "ultimate issue" is subject to § 907.02(1)'s heightened reliability standard. While expert testimony that opines on an ultimate issue is clearly subject to § 907.02(1), so too is expert testimony that does not express an opinion on an ultimate issue but still connects the witness' expertise to the particular facts of the case. The court of appeals' decision below unduly limits application of § 907.02(1) and *Daubert's*<sup>3</sup> heightened reliability standard to an exceedingly narrow category of expert testimony. Review is warranted and appropriate under Wis. Stat. § (Rule) 809.62(1r)(c)2. & (d).

Clarity regarding what distinguishes expert opinion testimony from expositional testimony

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<sup>3</sup> *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

is important because *Dobbs* held that § 907.02(1)'s heightened reliability standard only applies to expert *opinion* testimony. 392 Wis. 2d 505, ¶42. Expository testimony, on the other hand, is subject to a four-factor test that pre-existed *Daubert* and § 907.02(1) and is objectively easier to meet for the proponent of such testimony. *Id.*, ¶¶42-43.

The rule applied by the court of appeals below substantially narrows the category of expert opinion testimony to include only expert testimony that opines “on the ultimate issue.” (See Pet. App. 15). While expert opinion testimony may reach an “ultimate issue,” that is not the test supported by *Dobbs*. Instead, *Dobbs* supports a clear rule that expert opinion testimony is expert testimony that applies “the principles and methods to the specific facts of the case.” 392 Wis. 2d 505, ¶37.

In Wright's case, some of the detective's testimony was “generic” and expository, but as the court of appeals acknowledged, “[e]xperts can be retained to offer both expository and opinion testimony...” (Pet. App. 15). And, because the detective's testimony went beyond merely educating the jury generally about Tasers and stun guns, and because the detective applied his purported expertise to the facts of Wright's case, the opinion testimony was properly subject to § 907.02(1)'s heightened reliability standard.

In order to prevent expositional testimony from swallowing all expert testimony that doesn't "opine on the ultimate issue," review by this Court is warranted and appropriate.

### STATEMENT OF THE CASE AND FACTS

The state charged Danny Arthur Wright with first-degree sexual assault (count one), strangulation and suffocation (count two), and misdemeanor battery (count three). (2; 13). Count one was based on an allegation that Wright had sexual intercourse with L.M. by use of a "dangerous weapon." (2:1). Specifically, the state alleged that Wright used a "Zap Stick stun gun" to compel L.M. to have sexual intercourse with him. (2:2-3).

Prior to trial, the defense filed a motion in limine, pursuant to Wis. Stat. § 907.02(1), to prohibit Detective Michael Jaszczak from offering expert opinion testimony or evidence at trial. (38). The court held a motion hearing two days prior to Wright's jury trial. (94).

At the hearing, counsel for Wright explained that the state recently provided the defense with a "one-page report" that demonstrated the state's intent to use the detective "as an expert witness on *the stun gun in this case*." (94:20) (emphasis added). The state did not object to the defense characterization of the issue and proceeded to call the detective in an attempt to lay the foundation, under Wis. Stat.

§ 907.02(1) and *Daubert*, for the detective's expert testimony. (94:21, 25).

The detective testified that he has been employed as a police officer by the Superior Police Department for more than 25 years. (94:25; Pet. App. 21). He explained:

I've been a firearms instructor. I've been a defense and arrest tactics instructor and a Taser instructor. And part of that Taser instructor training, we go through the – how a taser works, how a stun gun works, the differences between the two, what is an electric weapon, those sorts of things.

I've also been on the Wisconsin Tactical Skills Advisory Committee for the State of Wisconsin. That determines what training our new police recruits will get in the State of Wisconsin, and as a part of that, we've had long, lengthy discussions about Taser and where it is going to sit within our use of force continuum at the time.

(94:26; Pet. App. 22).

The detective testified that he deployed a Taser “[o]nce upon -- out on the street” and “probably over a hundred times” in training. (94:26; Pet. App. 22). He also testified that he had been tased as part of his training. (94:26; Pet. App. 22).

Next, he testified about his training “as to how Tasers and stun guns work and what effect they have on a person's body.” (94:27; Pet. App. 23). He first

clarified that a Taser and a stun gun are “two different things.” (94:27; Pet. App. 23). He explained:

A Taser is different than a stun gun, but generally an electric weapon like that, it causes involuntary muscle contraction within the body, and it oftentimes immobilizes that muscle to -- what we call lock them up, and it causes them to stop what they are doing or in the area of a stun gun, offers time for someone to get away.

...

Well, the difference between a stun gun and a Taser is that a Taser has two probes that are propelled out of the gun, and as a part of that, the probes are separating as -- as the difference between the subject and the officer is -- is lengthened. So the probes are spreading, if you will, creating a -- two points of contact on the target, and the electricity goes between the probes.

On a Taser -- or on a stun gun, there are two electrical contact points that are very close to each other, and they don't propel out. It is part of the weapons system that creates that electrical arc that creates that muscular contraction within the person or within the target that creates that immobilization -- brief immobilization.

(94:27-28; Pet. App. 23-24).

At this point the court confirmed with the detective that a “stun gun has to be against a person's skin or body” and that “a Taser can be deployed toward



somebody.” (94:28-29; Pet. App. 24-25). The detective stated further that “a Taser can also be used like a stun gun” and that police officers call it “a drive stun technique, and it is essentially a pain compliance technique, which is similar to a stun gun.” (94:29; Pet. App. 25).

With regard to this case, the detective confirmed that he had the opportunity to “look at” the “ZAP Stick stun gun” seized from Wright’s residence. (94:29; Pet. App. 25). The detective confirmed that the ZAP Stick “is very similar to” the “kind of stun gun” he had previously testified about. (94:29; Pet. App. 25). The detective further confirmed that he went “online” and found the “two-page instruction manual” for the “exact kind of stun gun” at issue in this case. (94:29-30; Pet. App. 25-26). The state offered and the court accepted the manual, marked as Exhibit 1, into evidence. (94:30; 47; Pet. App. 26). He then confirmed that the manual’s descriptions of the “use of a stun gun” were consistent with his understanding of “what happens when someone uses a stun gun.” (94:31; 47:2; Pet. App. 27).

Finally, the detective confirmed that “yesterday,” he examined the “stun gun” and, after changing the batteries, found “that it, in fact, still works.” (94:31; Pet. App. 27).

On cross-examination, Detective Jaszczak admitted that he has no education or degrees in “human physiology,” that he has published no papers, regarding the “ZAP Stick stun gun” or any “similar

devices,” that he has written no articles about the ZAP Stick or any “similar stun guns,” that he has conducted no experiments with the ZAP Stick, that he is aware of no studies analyzing the effect of the ZAP Stick on a human being or on animals, and that he can identify no “peer-review study, experiment, authoritative text indicating that application of the ZAP Stick stun gun causes a person to be immobilized or incapacitated.” (94:32-33; Pet. App. 28-29).

The detective did attempt to explain that “it says it in the manual here, I guess,” in terms of what he was relying on to offer his opinion on the ZAP Stick. (94:33; Pet. App. 29).

Next, the detective confirmed that he wrote a report for the prosecutor with the understanding that “the State would need an expert to testify that this specific electric device was designed or used to incapacitate a person.” (94:34; Pet. App. 30). Further, the detective confirmed that he wrote in his report that the ZAP Stick stun gun is a “seven-watt electric weapon,” and that generally, “stun guns are seven to eleven watts” and that Tasers are typically “[t]wenty-six watts.” (94:34; Pet. App. 30). Finally, the detective confirmed that while his report noted that stun guns “generally are charged by nine-volt batteries,” the ZAP Stick at issue in this case is charged with two “[r]elatively small cylinder” “three-volt batteries.” (94:35-36; Pet. App. 31-32).

The court then sought to clarify whether the detective's opinion, that a stun gun "may cause someone to be immobilized or temporarily -- suffer temporary paralysis," was an opinion based on the device manual or on his "training and experience." (94:36; Pet. App. 32). The detective testified that his opinion was based on his training and experience. (94:36; Pet. App. 32).

On re-cross-examination, the detective admitted that he has zero "training and experience" "with this specific model ZAP Stick stun gun." (94:37; Pet. App. 33).

The court then heard arguments from the parties. (94:38-40; Pet. App. 34-36). The state began by arguing that "a lot of what Detective Jaszczak would be testifying to is not an expert opinion. For example, I'm not asking the detective, does this stun gun qualify as an electric weapon under Wisconsin Law?" (94:38; Pet. App. 34). Instead, the state argued that he would ask the detective, "based on his training and his own experience what happens when electrical weapons such as stun guns are deployed because of the elements that are required to be proved." (94:38; Pet. App. 34).

Counsel for Wright argued that this wasn't "even close. This is basic *Daubert*. The state has to put forth a witness who has the requisite qualifications. Clearly, this detective doesn't on the issue of the impact of the use of this particular model stun gun." (94:38-39; Pet. App. 34-35). Further, counsel argued

that the court, as “gatekeeper under *Daubert*,” must prevent that kind of “opinion testimony [from] coming in.” (94:39; Pet. App. 35). Specifically, counsel argued that the detective has training and experience in the use and deployment of Tasers and that maybe he could be qualified on the “use of force continuum,” but that is not what the state intends to elicit from Detective Jaszczak. (94:39; Pet. App. 35).

In response, the court asked the state: “You’re not intending to ask him whether this stun gun meets the legal definition, are you?” (94:40; Pet. App. 36). While the state responded, “I am not,” counsel for Wright argued that, “Well, he’s not going to use those words, but that’s what he’s going to do.” (94:40; Pet. App. 36).

The court then denied Wright’s motion to prohibit Detective Jaszczak from testifying as an expert witness regarding the “ZAP Stick stun gun” at issue in this case:

I know there has been an argument here about the requisite qualifications of [Detective] Jaszczak. Obviously, qualifications to render opinions can be based on a number of things, not the least of which is based upon, you know, training and experience. And I believe based upon the testimony I’ve heard and the training and experience of [Detective] Jaszczak, that he certainly has the requisite qualifications to render the opinion. I think the opinion is admissible.

(94:41; Pet. App. 37). The case proceeded to trial on August 13 and 14, 2020. (96, 95).

As relevant here, during its opening statement, the state explained that the jury would hear from Detective Jaszczak, who would “talk to you a bit about Tasers and stun guns, and what happens when electric current is introduced into a person’s body with one of those devices.” (96:72).

In response, counsel for Wright conceded that the state would present video evidence of a physical assault that occurred while Wright and L.M. were engaged in sexual intercourse. (96:82). Counsel admitted that the video would show that Wright “punches her, he zaps her with this electric device called a ZAP Stick.” (96:82). Accordingly, counsel told the jury that at the end of the trial they “should absolutely convict him of battery.” (96:82-83).

However, with respect to count one, the charge of first-degree sexual assault by use of a dangerous weapon, counsel told the jury that “[t]here will be no credible evidence in this trial that the device used in this case was designed or used to incapacitate [L.M.]” and that while Wright used the ZAP Stick to hurt her and to cause her pain, “[h]e did not use it to compel her to have sexual intercourse with him.” (96:84-85).

L.M. testified at trial. (96:168-202). L.M. testified that Wright is her “ex.” (96:169). L.M. testified that on the night of March 11 and early morning of March 12, 2020, she was with Wright. (96:169-171). L.M. described Wright being “mad” about something and then having sex. (96:171-174). L.M. testified that at one point, Wright complained

that she wasn't doing "good enough" and that Wright "hit me in the head, and it went on from there." (96:174-175, 177). L.M. testified that she wanted Wright to stop but he didn't stop. (96:178). L.M. eventually explained that she later ran out of the house and that Wright "tased" her as she left. (96:179).

With regard to the "stun gun," L.M. stated that Wright had used it "a lot...Like he -- first he did it, like oh, does this hurt? Yeah, it hurts. Okay. Now you know it hurts, why aren't (sic) you doing it?" (96:180). L.M. explained that during this alleged incident, Wright used the "ZAP Stick" on her stomach, legs, and "once in the vagina." (96:180-181). Asked how it felt, L.M. said, "[i]t hurt." (96:181).

Immediately after L.M. testified, the state called Detective Jaszczak. (96:202). In line with his testimony at the *Daubert* hearing, the detective testified that he has "had many, many trainings over the years as a police officer in the use of force and firearms training. I am a Taser instructor. I am a firearms instructor. Defense and arrest tactics instructor." (96:204; Pet. App. 40). The state then asked the detective about stun guns and the detective testified that "as part of a Taser instructor training, they talked about the differences between a Taser and a stun gun. A Taser is different than a stun gun, and so they talked about that and -- and how a Taser works versus a stun gun and how that works." (96:206; Pet. App. 42).

Next, Detective Jaszczak testified about Tasers:

A Taser is a police tool that we use that actually propels two what we call probes, and they're like fishing hooks on a -- on weights that get propelled out of the Taser and that are connected by wires. And the farther the distance the probes go from the weapon to the subject, the farther the probes spread apart. And then the electricity from the Taser goes between each of the probes and just between each of the probes.

(96:207; Pet. App. 43). Asked "what happens when electricity from a Taser goes to the probes that are connected to a person's body," Detective Jaszczak responded:

It creates what we call a neuromuscular incapacitation. The body is derived of a central nervous system. It's our brain and our spinal column, and the brain sends messages, if you will to your muscles.

And what the Taser does is it creates this involuntarily muscle contraction, and we call it a lockup. So if a person gets hit with a Taser -- with the Taser and the probes are connected and they have a good connection, the electricity goes, and it tightens up the muscles in the body, and it locks a person up and sometimes they fall.

(96:207-208; Pet. App. 43-44).

The state then asked "[h]ow is a stun gun is different from a Taser?" (96:208; Pet. App. 44). Detective Jaszczak opined:

Well, a Taser is a 26-watt weapons system. The stun guns are usually in that 7-watt to 11-watt power range, if you will. The stun gun has two contacts, two electrical contacts, and the electricity flows between those contacts, and in a stun gun, the -- it works on the sensory-motor system.

With a Taser, it works on the nervous system, and the sensory motor system. Combining those two gets that neuromuscular incapacitation that we talked about.

In a stun gun, it's a -- because the electricity only goes between those two electrodes, and it is oftentimes a very short distance apart. It is a pain compliance tool that immobilizes or that oftentimes tightens up the muscles right at the point of contact.

If a stun gun is used on a nerve bundle in the body, it oftentimes locks them up briefly depending on the length or duration of the stun, if you will.

(96:208; Pet. App. 44).

Next, Detective Jaszczak confirmed that “a stun gun” was found in Wright’s home and that he had “a chance to look at that stun gun prior to court today.” (96:208; Pet. App. 44). The stun gun was marked as Exhibit 11 for trial and handed to Detective Jaszczak. (96:209; Pet. App. 45). Detective Jaszczak noted that when he “pulled it out of evidence earlier,” it needed new batteries to function. (96:209; Pet. App. 45). The state then asked



Detective Jaszczak to step down from the witness stand and demonstrate to the jury how the device worked: “This particular stun gun has a flashlight, and then you’ll see the electricity between these contacts when I push the button....It operates for as long as I push the buttons. On a Taser, each squeeze of the trigger is five seconds. This one stops as soon as you let the trigger go.” (96:210; Pet. App. 46).

On cross-examination, Detective Jaszczak testified that this specific device was a “ZAP Stick 800KV stun gun” and that there are different models of stun guns. (96:211; Pet. App. 47). As at the *Daubert* hearing, Detective Jaszczak admitted that he had written no papers or articles on the ZAP Stick and that he had “conducted no experiments” with the ZAP Stick. (96:211; Pet. App. 47). The detective agreed that he has participated in “demonstrations in Taser training,” but that “Taser, again, is a different beast than a stun gun.” (96:211-212; Pet. App. 47-48). Moreover, Detective Jaszczak denied being aware of any “studies analyzing the effect of a ZAP Stick stun gun on human beings.” (96:212; Pet. App. 48). In response to a question about whether he could identify any “study, paper, experiment indicating that application of the ZAP Stick stun gun causes a person to be immobilized or incapacitated,” the Detective said, “Yes.” (96:212; Pet. App. 48). Asked for the “study,” Detective Jaszczak referred to the instructional manual for the ZAP Stick. (96:212; Pet. App. 48). Counsel confirmed that Detective Jaszczak was aware of no “study or

experience” that was not an advertisement for the ZAP Stick. (96:212; Pet. App. 48).

Next, Detective Jaszczak confirmed that stun guns are typically charged with “nine-volt” batteries, but that the ZAP Stick is not. (96:213; Pet. App. 49). Finally, Detective Jaszczak confirmed that he put “fresh batteries” in the ZAP Stick earlier in the week “for the purposes of this trial.” (96:213; Pet. App. 49).

Closing arguments paralleled the parties’ opening statements. (95:-17-52). While the state argued that Wright used a “dangerous weapon,” the “ZAP Stick,” to compel L.M. to have sexual intercourse, the defense argued that the evidence showed only that Wright battered L.M. during otherwise consensual sex. After jury instructions<sup>4</sup> and deliberations, the jury returned guilty verdicts on all counts. (95:72-74; 72).

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<sup>4</sup> The court instructed the jury on the expert testimony provided by Detective Jaszczak: “Ordinarily, a witness may testify only about facts. However, a witness with specialized knowledge in a particular field may give an opinion in that field. In determining the weight to give to this opinion, you should consider: The qualifications and credibility of the witness; the facts upon which the opinion is based; and the reasons given for the opinion. Opinion evidence was received to help you reach a conclusion. However, you are not bound by any witness’ opinion.” (95:68-69).

At sentencing, the court imposed a sentence of 25 years imprisonment on count one, consisting of 15 years initial confinement and 10 years extended supervision. (88; 83; 84; App. 34-36).

On appeal, Wright challenged the court's denial of his motion in limine seeking to prevent the state from calling Detective Jaszczak as an expert witness. The court of appeals affirmed, agreeing with the state that "Jaszczak testified about the general characteristics of electronic weapons, and more specifically stun guns, but did not opine on the ultimate issue of whether the stun gun used by Wright satisfied the statutory definition of a 'dangerous weapon.'" (Pet. App. 15).

This petition for review asks this Court to reverse the court of appeals decision below and to clarify that expert testimony that concerns the specific facts of a case is opinion testimony subject to § 907.02(1)'s heightened reliability standard regardless of whether the expert "opines on the ultimate issue."

## ARGUMENT

**This Court should accept review to clarify the line between "expositional" expert testimony and expert opinion testimony.**

Below, neither the court of appeals nor the state cited any authority for the proposition that if an expert does not "opine on the ultimate issue" the testimony is

expositional and not subject to Wis. Stat. § 907.02(1)'s heightened reliability standard. (*See* Pet. App. 15). The *Dobbs* court set forth no such rule or distinction. Rather, the clear line set forth in *Dobbs* is that testimony is expositional if it is general in nature, not applied to the specific facts of the case, and meant to merely educate the fact finder about a subject that is relevant to the case. 392 Wis. 2d 505, ¶¶36-42.

The only reference in *Dobbs* that even tangentially touches on the concept of an “ultimate issue,” as used by the state and the court of appeals below, is in the fact section, where the court noted *Dobbs*' proposed expert “affirmed that he did not review any reports of the specific facts of *Dobbs*'s case, and that he would not offer an ultimate opinion on the truthfulness of *Dobbs*'s confessions.” *Id.*, ¶20. By definition, an expert that never reviewed the specific facts of *Dobbs*' case nor sought to apply their expertise to any aspect of the case could not offer an ultimate opinion about the truthfulness of *Dobbs*' confession. Yet, that is not the same as saying *Dobbs*' proposed testimony was not expert opinion testimony subject to § 907.02(1)'s heightened reliability standard merely because the expert did not intend to offer an ultimate opinion or “opine on the ultimate issue.”

While experts may, in some cases, offer an opinion that “embraces an ultimate issue to be decided by the trier of fact,” that is not the same as saying any expert testimony that does not opine on the ultimate issue is not opinion testimony. *See* Wis. Stat. § 907.04.

In Wright's case, the prosecutor sought out Detective Jaszczak and asked, "do you think this [ZAP Stick] is an electrical weapon?" (94:37; Pet. App. 33). Detective Jaszczak wrote a report offering that opinion and the state's intent was to use the detective to prove that "this specific electric device was designed or used to incapacitate a person." (94:34; Pet. App. 30).

At trial, the detective testified that he was one of the detectives assigned to investigate Wright's case. (96:204; Pet. App. 40). The detective testified generally about Tasers and stun guns. (96:204, 206-208; Pet. App. 40, 42-44). The detective defined explained that a stun gun has "two contacts, two electrical contacts, and the electricity flows between these contacts, and in a stun gun, the -- it works I the sensory-motor system." (96:208; Pet. App. 44). The detective further explained that the "stun gun is used on a nerve bundle in the body, it oftentimes locks them up briefly depending on the length or the duration of the stun, if you will." (96: 208; Pet. App. 44). Immediately thereafter, the detective testified that "a stun gun" was found in Wright's home and that he examined "that stun gun." (96: 208; Pet. App. 44). The prosecutor then handed the ZAP Stick to the detective in order to demonstrate to the jury how it worked. (96:209-210; Pet. App. 45-46).

While the detective's testimony concerning Tasers, stun guns, and the ZAP Stick at issue in Wright's case was relatively short and sweet, the record is clear that the detective applied his purported area of expertise to the specific facts of Wrights case,

and under *Dobbs*, 392 Wis. 2d 505, ¶¶31-42, offered expert opinion testimony that should have been subject to § 907.02(1)'s heightened reliability test. The fact that the detective did not explicitly testify that the ZAP Stick met the statutory definition of an electric weapon is not determinative. The state's and the court of appeals' theory below creates a gaping loophole whereby expert opinion testimony is not subject to § 907.02(1) so long as the expert does not "opine on the ultimate issue." Review is necessary and appropriate to clarify that not all expert opinion testimony concerns the "ultimate issue."

## CONCLUSION

For the reasons set forth above, Danny Arthur Wright, respectfully requests that this Court accept review, clarify the law, and reverse and remand his case to the circuit court for a new trial.

Dated this 15<sup>th</sup> day of June, 2023.

Respectfully submitted,

*Electronically signed by*  
*Jeremy A. Newman*

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### **CERTIFICATION AS TO FORM/LENGTH**

I hereby certify that this petition conforms to the rules contained in s. 809.19(8)(b), (bm) and 809.62(4). The length of this petition is 4,605 words.

### **CERTIFICATION AS TO APPENDIX**

I hereby certify that filed with this petition 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 rules 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 or 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 this 15<sup>th</sup> day of June, 2023.

Signed:

Electronically signed by

Jeremy A. Newman

JEREMY A. NEWMAN

Assistant State Public Defender