

FILED
06-29-2023
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

No. 2021AP1252-CR

STATE OF WISCONSIN,

Plaintiff -Respondent,

v.

DANNY ARTHUR WRIGHT,

Defendant-Appellant-Petitioner.

RESPONSE TO THE PETITION FOR REVIEW

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The Plaintiff-Respondent State of Wisconsin opposes the petition for review filed by Defendant-Appellant-Petitioner Danny Arthur Wright on the following grounds:

1. The petition does not satisfy the criteria for review at Wis. Stat. § (Rule) 809.62(1r). While the authored opinion of the court of appeals may be cited for its persuasive value, it is not binding precedent.

2. Despite Wright's rather alarmist argument to the contrary (Pet. 4–6), this case involves nothing more than review for an erroneous exercise of discretion of a trial court's decision to admit expert testimony when the expert is qualified by extensive training and experience on a specific topic and his testimony will assist the trier of fact.

3. Consistent with this Court's decision in *State v. Dobbs*, 2020 WI 64, 392 Wis. 2d 505, 945 N.W.2d 609, the court of appeals reasonably deferred to the trial court's discretionary decision to admit the expert's exposition testimony about the properties of tasers and stun guns based on his extensive training and experience with such devices. This testimony aided the jury in deciding whether Wright used an "electric weapon," a stun gun, against the victim during the sexual assault. *State v. Wright*, No. 2021AP1252-CR, slip op., ¶¶ 22–32 (Wis. Ct. App. May 16, 2023) (unpublished). The expert did not render an opinion on the ultimate issue whether the particular stun gun used by Wright was a "dangerous weapon" that "immobilized or incapacitated" the victim, a necessary element of sexual assault under Wis. Stat. § 940.225(1)(b). *Id.* ¶¶ 24, 30–31. That was properly left for the jury to decide.

4. "This Court does not normally review a discretionary decision of the court of appeals." *State v. Kucharski*, 2015 WI 64, ¶ 23, 363 Wis. 2d 658, 866 N.W.2d 697 (citation omitted). All that the court of appeals did was defer to the trial court's sound discretion in admitting the

expert testimony, and Wright has not shown that the court of appeals erred as a matter of law in doing so. Wright has not offered a sufficient reason for this Court to second-guess the decision of the court of appeals or to revisit its 2020 decision in *Dobbs*.

5. Finally, this Court may not even reach the issue presented in the petition because the State is prepared to prove, as it argued in the court of appeals, that if the expert testimony was inadmissible the error was harmless.

This Court should deny review.

Dated this 29th day of June 2023.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

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FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm), and 809.62(4) for a response produced with a proportional serif font. The length of this response is 407 words.

Dated this 29th day of June 2023.

Electronically signed by:

Daniel J. O'Brien
DANIEL J. O'BRIEN
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 29th day of June 2023.

Electronically signed by:

Daniel J. O'Brien
DANIEL J. O'BRIEN
Assistant Attorney General