STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2023AP215

In the matter of the mental commitment of D.E.W.:

WINNEBAGO COUNTY,

Petitioner-Respondent,

v.

D.E.W.,

Respondent-Appellant-Petitioner.

On Appeal From an Order for Involuntary Medication and Treatment Entered in Winnebago County Circuit Court, the Honorable Scott Woldt Presiding.

BRIEF OF RESPONDENT-APPELLANT-PETITIONER

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ISSUES PRESENTED

1. Did the County prove that Darren[1] received a "reasonable explanation" of the "particular medication" the County sought to involuntarily administer, as required by Wis. Stat. § 51.61(1)(g)4 and prior decisions of this Court?

The circuit court granted the County's request for an involuntary medication order.

On appeal, the court of appeals rejected Darren's argument that the statute's usage of the phrase "particular medication" means that the doctor's testimony at the medication hearing needed to specify which medication, if any, he had discussed with Darren. It also found the evidence otherwise sufficient that Darren had received an adequate explanation of the advantages, disadvantages, and alternatives to that (unnamed) medication.

2. Did the County prove, by clear and convincing evidence, that Darren was incompetent under the statutory standards in Wis. Stat. § 51.61(4)(g)1.a.&b.?

As noted above, the circuit court granted the County's request for an involuntary medication order.

The court of appeals, after holding that even conclusory testimony on this point can be sufficient

[1] Pseudonym.

evidence of incompetency, held that any shortcomings in the record were irrelevant because the examiner opined that Darren was incompetent and the circuit court found that witness credible.

POSITION ON ORAL ARGUMENT AND PUBLICATION

By accepting this case for review, the Court has determined that oral argument and publication are necessary to resolve these important legal questions.

STANDARD OF REVIEW

Determining whether the facts elicited at the medication hearing satisfy the statutory standards in Wis. Stat. § 51.61(1)(g)4 is a question of law reviewed *de novo*. *Outagamie County v. Melanie L.,* 2013 WI 67, ¶ 39, 349 Wis. 2d 148, 833 N.W.2d 607.

STATEMENT OF THE CASE AND FACTS

This case arises as a result of the County's petition to involuntarily medicate Darren with psychotropic medication pursuant to Wis. Stat. § 51.61(1)(g)3. (2:1). In its pleadings, the County alleged that Darren was "not competent to refuse medication and treatment" as defined in Wis. Stat. § 51.61(1)(g)4. (2:1).

As a result of the County's petition, the circuit court, the Honorable Scott C. Woldt, held a contested

hearing in October 2023. (22); (App. 16). Dr. Thomas Michlowski, the "medical director at the Wisconsin Resource Center," appeared as the County's expert witness. (22:4); (App. 19).[2] Dr. Michlowski testified that he first examined Darren upon admission to the facility roughly two months earlier. (22:4); (App. 19). He then met with Darren "several times" thereafter, with his most recent meeting occurring on the morning of the medication hearing. (22:4); (App. 19). In total, Dr. Michlowski spent "a few hours" interacting with Darren since his admission to the Wisconsin Resource Center. (22:5); (App. 20).

These "examinations" were "comprised of" what Dr. Michlowski labeled "[t]he standard mental status examination, focusing on whatever the issues are at hand." (22:5); (App. 20). As a result of those examinations, Dr. Michlowski diagnosed Darren with "Schizoaffective Disorder." (22:5); (App. 20). Given Darren's mental illness, Dr. Michlowski was requesting judicial "authorization" to involuntarily administer psychotropic medication. (22:9); (App. 24). He testified to his belief that this unnamed and undescribed medication would have "a therapeutic value" and would not "unreasonably impair [Darren's] ability to prepare for future court hearings[.]" (22:9);

[2] As is common in Chapter 51 proceedings, this was a hybrid hearing addressing both the County's request to extend Darren's ongoing involuntary commitment as well as its separate request for involuntary medication. The order extending Darren's involuntary commitment is not at issue on appeal.

(App. 24). Instead, the doctor believed medication would "help him to do so."[3] (22:9); (App. 24).

Dr. Michlowski was then asked the following two questions by counsel for the County:

> Were the advantages, disadvantages, as well as alternatives to accepting medication explained to [Darren]? And can you please cite one of the advantages?

(22:9-10); (App. 24-25).

Without clarifying whether and to what extent he had explained the advantages, Dr. Michlowski immediately began listing what he perceived as the advantages to medication:

> The -- well, one of the advantages would be help [sic] him with his thought processes so that he could think in a more logical way and be able to

[3] The doctor appears to have been confused as to whether the request for involuntary medication was governed by Wis. Stat. § 51.61(1)(g)2 or 3. Subdivision 2 is the procedure for involuntarily medicating a person after a probable cause hearing but before the court proceedings related to the involuntary mental commitment order have been finalized. As this was an extension hearing—and the issue of medication was being determined in conjunction with a final order—Darren's situation was governed by Wis. Stat. § 51.61(1)(g)3, which does not require the court to determine whether medication would have therapeutic value and whether that medication would "unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings" as in Wis. Stat. § 51.61(1)(g)2.

> carry a concept to its logical conclusion in a socially acceptable way and help him not to believe that people are persecuting him in various ways.
>
> And there are other advantages, and those would be to prevent and control to help him control his mood and his affect, which is quite problematic. For example, evidence just last week where he was very disruptive with the nurses and had to be placed on a high management unit.

(22:10); (App. 25).[4]

As to disadvantages, Dr. Michlowski conveyed the following information to Darren:

> Well, as is true with any medication, there – no medication is free of side effects. So there could be common side effects that effect the central nervous system such as dizziness, lightheadedness, the gastrointestinal system, upset stomach. And then more serious general metabolic effects such as developing diabetes, which I discussed in detail with him.

(22:11); (App. 26). As to alternatives, the doctor "discussed" "individual therapy, group therapy, various programs that are conducted at WRC." (22:11); (App. 26).

[4] Trial counsel unsuccessfully objected, as it would appear that the doctor's testimony about Darren becoming "disruptive" was based, at least in part, on what he had read in Darren's medical record rather than his personal observations. (22:10); (App. 25).

Dr. Michlowski answered in the negative when asked if he believed Darren was competent to refuse medication. (22:9); (App. 24). Specifically, Dr. Michlowski believed Darren was not "capable of expressing an understanding of those advantages, disadvantages, and alternatives[.]" (22:11); (App. 26). He went on to explain the basis for his opinion that Darren was incompetent as follows:

> Because his mental illness precludes his being able to process that information such -- and for the purpose of weighing the benefits and disadvantages and applying such to his mental illness. For example, he told me on admission that he would take medication and then after several days he refused. And, when I asked him, he stated I don't need medication. I just need it to help me sleep, that I really don't need medication at all. And he reinforced that this morning.

(22:11); (App. 26). According to Dr. Michlowski, Darren had also "lied" to a nurse practitioner about his side effects at some point in the past. (22:12); (App. 27).[5] Dr. Michlowski believed it was not possible to have a "rational conversation" with Darren about medication and, as support for that proposition, cited Darren's frequent requests for additional food despite the fact that one of the side effects of his medication "could be" diabetes. (22:12-13); (App. 27-28). Due to the alleged risk of diabetes, Dr. Michlowski disagreed with how much food Darren was eating and disapproved of

[5] The court overruled counsel's hearsay objection. (22:12); (App. 27).

Darren trading with other inmates to obtain additional food. (22:13); (App. 28). And, while Darren had indicated he would take his medication in exchange for an extra "bag meal," the doctor suggested these efforts were proof of Darren's incompetency to refuse that medication. (22:12-13); (App. 27-28).

In his testimony, Darren informed the court he was "trying to be on [his] best behavior, take [his] medication, and go to school, and learn how to read." (22:25); (App. 40).

The court then granted the County's request for involuntary medication, making the following findings:

> As far as medication is concerned, I'll issue a medication order. He indicates that he's willing to take the medication, but the records are complete with him using medication as a tool to get what he wants. So we need to take that tool away so he gets the treatment in which he needs. The treatment would not impair his ability to participate in his future legal proceedings. Therefore, issue a medication order.

(22:27-28); (App. 42-43). On the order for involuntary medication, the circuit court checked the box corresponding to the second incompetency standard, that Darren is "substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her condition in order to make an informed choice as to whether to accept or refuse psychotropic medications." (15:1); (App. 15).

On appeal, Darren argued that the County had failed to prove that: (1) he received a reasonable explanation of the proposed medication and (2) he was incompetent under the statutory standard. *Winnebago County v. D.E.W.,* No. 2023AP215, ¶¶ 9, 11, unpublished slip op. (Wis. Ct. App. July 26, 2023).[6] (App. 7-8).

With respect to his reasonable explanation argument, the court of appeals disagreed that Dr. Michlowski's failure to describe in his testimony *which* medication he had discussed with Darren rendered the evidence insufficient. *Id*., ¶ 12. (App. 8). In the court of appeals' view, even though "Michlowski did not testify to the name of the specific medication he was referring to, it is clear from the totality of his testimony that he was referring to some 'particular medication.'" *Id*. (App. 8).

In support for its holding that omission of this information was immaterial to a sufficiency challenge, the court of appeals cited its previous unpublished but citable decision in *Winnebago County v. P.D.G.*, No. 2022AP606-FT, unpublished slip op. ¶ 28 (Wis. Ct. App. Sept. 7, 2022)[7] for the proposition that there is no legal requirement that the doctor actually name a particular drug during his testimony. *Id*. (App. 8). The court of appeals otherwise accepted the overall

[6] Although Darren also renewed his challenges to several evidentiary rulings, the court of appeals did not address those issues in the body of its opinion. *D.E.W.,* No. 2023AP215, ¶ 20 n.6. (App. 14). The issue is not presented to this Court for review.

[7] (App. 108).

testimony as sufficient to satisfy the statutorily-imposed reasonable explanation requirement. *Id*. (App. 8).

As to whether the County had proven by clear and convincing evidence that Darren was incompetent to refuse medication, the court of appeals cited this Court's decision in *Winnebago County v. Christopher S.*, 2016 WI 1, 366 Wis. 2d 1, 878 N.W.2d 109 to hold that even "conclusory" testimony can be sufficient to meet the County's burden. *Id*., ¶¶ 14-15. (App. 9-11). Because Dr. Michlowski's testimony "mirrored the statutory standard," the court concluded it was therefore sufficient evidence of Darren's incompetency. *Id*., ¶ 17. (App. 12-13). Although the court of appeals conceded "more detail by Michlowski might have been helpful to the County in persuading the court that he was credible and his findings sound," it ultimately concluded that any deficiencies were irrelevant. *Id*. (App. 12-13). In its view, "As long as the court finds the witness credible and the statutory standard considered, the incompetency determination holds." *Id*., ¶ 17. (App. 13).

Assessing the record evidence, the court of appeals therefore opined that "[w]hether the additional evidence supporting Michlowski's opinions is thin or plentiful, the court here found Michlowski credible, so his testimony as to both subdivs. a. and b. carried the day." *Id*., ¶ 20. (App. 14).

Darren petitioned for review.

ARGUMENT

I. The County must do more than offer "perfunctory" evidence in order to overcome an individual's constitutionally-protected right to refuse medication.

A. Wisconsin law presumes that a person is competent to refuse medication, regardless of their commitment status or mental health history. Only clear and convincing evidence of incompetency can overcome this presumption.

As this Court has previously recognized, "An individual's right to refuse unwanted medical treatment 'emanates from the common law right of self-determination and informed consent, the personal liberties protected by the Fourteenth Amendment, and from the guarantee of liberty in Article I, [S]ection 1 of the Wisconsin Constitution.'" *Melanie L.,* 2013 WI 67, ¶ 42 (quoting *Lenz v. Phillips Career Dev. Ctr.,* 167 Wis. 2d 53, 67, 482 N.W.2d 60 (1992) (brackets in original)).

Wisconsin law therefore requires circuit court judges, when faced with a request to pursue a serious bodily intrusion of involuntarily administering medication, to "presume that the patient is competent" to refuse. *Virgil D. v. Rock County*, 189 Wis. 2d 1, 14, 524 N.W.2d 894 (1994). This "presumption of competence to choose must apply to all individuals regardless of commitment status." *Melanie L.,* 2013 WI 67, ¶ 45. Thus, the mere fact that a person is

mentally ill or subject to a commitment order is not sufficient proof of incompetency. *State ex rel. Jones v. Gerhardstein*, 141 Wis. 2d 710, 734, 416 N.W.2d 883 (1987). This is because "the concepts of mental illness and competency are not synonymous. An individual may be psychotic, yet nevertheless capable of evaluating the advantages and disadvantages of taking psychotropic drugs and making an informed decision." *Id*. at 728.

Accordingly, it is the County's burden to overcome this presumption of competency by clear and convincing evidence which satisfies the statutory incompetency standard(s). *Virgil D.,* 189 Wis. 2d at 14. Importantly, the mere act of refusing—of making what the County may deem the "wrong choice"—is also another categorically insufficient basis on which to override an individual's freedom to choose. *Id*. at 15. Even if the person's choice may be a "poor" one, our law recognizes that it is the individual's choice "to make as long as he understands the implications of that decision." *Id*. In other words, just because the person "disagrees with the recommendation of the examining psychiatrist, he does not lose his right to refuse administration of the drug." *Id*. at 15-16.

Given the substantial liberty interests at issue in these cases, this Court has therefore made it quite clear that it views the legal framework as imposing a stringent burden of proof on the County:

> Whatever the circumstances may be, the County bears the burden of proof on the issue of competency in a hearing on an involuntary

> medication order. **These hearings cannot be perfunctory under the law. Attention to detail is important.** A county cannot expect that a judge concerned about a person with mental illness will automatically approve an involuntary medication order, even though the person before the court has chosen a course of action that the county disapproves.

Melanie L., 2013 WI 67, ¶ 94 (emphasis added). And this Court has further noted that, even if the statutes may make the County's task difficult in a given case, "[t]his [C]ourt does not have the option of revising the statute to make the County's work or burden easier." *Id*.

B. To meet its burden of proof, the County must satisfy the exacting statutory requirements of Wis. Stat. § 51.61(1)(g)4, including the "reasonable explanation" criterion.

These are important cases involving fundamental constitutional rights; as a result, our legislature has crafted a statutory scheme to "reflect a balance between treating mental illness and protecting the individual and society from danger on the one hand, and personal liberty of the individual on the other." *Id*., ¶ 43.

One part of that statutory scheme, under examination in this appeal, is the procedure described in Wis. Stat. § 51.61(1)(g)3, pertaining to individuals (like Darren) subject to a final commitment order. Wis.

Stat. § 51.61(1)(g)4 describes the particular elements that must be met to involuntarily medicate a person under this procedure:

> For purposes of a determination under subd. 2. or 3., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:
>
> a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.
>
> b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

Wis. Stat. § 51.61(1)(g)4.[8]

[8] Notably, in addition to the incompetency standard, the statutes also permit involuntary medication if "a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others." Wis. Stat. § 51.61(1)(g)3. This Court has described this as a safety valve meant to address what happens "if an emergency arises." *Virgil D.*, 189 Wis. 2d at 16. This criterion is not at issue in this appeal.

Our legislature has therefore created two alternative standards for proving that a person is incompetent in this context. Under the first standard, "the county petitioner may prove by clear and convincing evidence that the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting the prescribed medication, and the alternatives." *Melanie L.*, 2013 WI 67, ¶ 54. "This is a difficult standard for the county to meet if the individual is able to express a reasonable understanding of the medication." *Id*.

Under this first standard, "the circuit court must first be satisfied that the advantages and disadvantages of, and the alternatives to, medication have been adequately explained to the patient." *Virgil D.*, 189 Wis. 2d at 14. If the court is satisfied that the person received a reasonable explanation, it "must consider the evidence of the patient's understanding, or the lack thereof, regarding the advantages, disadvantages, and alternatives." *Id*. In making this legal determination, this Court has encouraged lower courts to make use of the following factors:

Likewise, while this Court has also held mere incompetence alone is potentially insufficient to permit involuntary medication (as the person must also be dangerous), *see Winnebago County v. C.S.,* 2020 WI 33, ¶¶ 31-33, 391 Wis. 2d 35, 940 N.W.2d 875, Darren concedes that his recommitment order under the second standard (§ 51.20(1)(a)2.b.) means clarification of the connection between incompetency and a sufficient showing of dangerousness is not at issue in this appeal.

> (a) Whether the patient is able to identify the type of recommended medication or treatment;
>
> (b) whether the patient previously received the type of medication or treatment at issue;
>
> (c) if the patient received similar treatment in the past, whether he or she can describe what happened as a result and how the effects were beneficial or harmful;
>
> (d) if the patient has not been similarly treated in the past, whether he or she can identify the risks and benefits associated with the recommended medication and treatment; and
>
> (e) whether the patient holds patently false beliefs about the recommended medication or treatment which would prevent an understanding of legitimate risks and benefits.

Id. at 15.

Given the "rigorous" nature of this legal requirement, *Melanie L.*, 2013 WI 67, ¶ 69, the legislature has also "crafted a somewhat relaxed standard[,]" *id.*, ¶ 54, via Wis. Stat. § 51.61(1)(g)4.b:

> Under the second standard, the county petitioner may prove by clear and convincing evidence that the individual is substantially incapable of applying the understanding he or she has of the advantages and disadvantages of the medication (and the alternatives) to his or her mental illness in order to make an informed choice as to whether to accept or refuse the medication.

Id., ¶ 55.

Like the first standard, this requirement also has discrete elements. The first two elements are shared in common between the two statutory standards. First, the person's incompetency must result from their mental illness. *Melanie L.*, 2013 WI 67, ¶ 66; Wis. Stat. § 51.61(1)(g)4. Second, as stated above, the person "is entitled to receive from one or more medical professionals a reasonable explanation of proposed medication." *Id.*, ¶ 67. This is a robust requirement:

> The explanation should include why a particular drug is being prescribed, what the advantages of the drug are expected to be, what side effects may be anticipated or are possible, and whether there are reasonable alternatives to the prescribed medication. The explanation should be timely, and, ideally, it should be periodically repeated and reinforced. Medical professionals and other professionals should document the timing and frequency of their explanations so that, if necessary, they have documentary evidence to help establish this element in court.

Id.

Next, the County must prove that the person is "substantially incapable" of applying a requisite understanding which "means, *to a considerable degree*, a person lacks the ability or capacity to apply an understanding of the advantages and disadvantages of medication to his or her own condition." *Id.*, ¶ 70 (emphasis in original). This Court has interpreted "applying an understanding" to mean that the person can "*make a connection between* an expressed

understanding of the benefits and risks of medication and the person's own mental illness." *Id.*, ¶ 71 (emphasis in original). As framed by this Court in *Melanie L.*, evidence on this point must consist of more than just conclusory averments of incapacity:

> Inasmuch as the subject of a commitment hearing cannot be forced to testify, it is the responsibility of medical experts who appear as witnesses for the county to explain how they probed the issue of whether the person can "apply" his or her understanding to his or her own mental condition. The person's history of noncompliance in taking prescribed medication is clearly relevant, but it is not determinative if the person can reasonably explain the reason for the noncompliance. For both the patient and the medical professional, facts and reasoning are nearly as important as conclusions.

Id., ¶ 75.

Above all, the County is tasked with proving that the person cannot make an "informed choice" about medication; the statutory language therefore "seeks to evaluate a person's ability to rationally choose an option." *Id.*, ¶ 76. In determining whether a person is making an informed choice, the County must therefore do more than point to the person's refusal; rather, it must present evidence relevant to the person's "ability to process and apply the information available to the person's own condition before making that choice." *Id.*, ¶ 78.

Thus, based on this Court's unambiguous precedents in *Virgil D.* and *Melanie L.*, the County faces significant evidentiary obligations at an involuntary medication hearing. In addition to proving that the person received a reasonable explanation of the proposed medication, it must also point to specific evidence to support its contention that the person is either incapable of understanding the requisite information or, in the alternative, that they are substantially incapable of applying that understanding to their situation. Notably, the County takes on these evidentiary challenges under a heightened burden of proof—the clear and convincing standard—which "reflects not only the importance of a particular adjudication but also serves as a societal judgment about how the risk of error should be distributed among the litigants." *Id.*, ¶ 85.

II. The County failed to prove that Darren received a reasonable explanation of the proposed medication.

A. Dr. Michlowski failed to clarify whether he discussed a *particular* drug with Darren.

In this case, the most glaring shortcoming in Dr. Michlowski's testimony is the failure to specify the particular medication to be involuntarily administered to Darren and the concomitant failure to testify that he specifically discussed that particular medication

with Darren before concluding that Darren was incompetent to refuse its administration.[9]

This contravenes the plain language of the statute, which requires that the person be informed of the "advantages and disadvantages of and alternatives to accepting the *particular medication* or treatment […]." Wis. Stat. § 51.61(1)(g)4 (emphasis added). It is also incompatible with this Court's holding in *Melanie L.*, which again requires an explanation to the individual of the risks, benefits, and alternatives to a "particular drug." *Melanie L.*, 2013 WI 67, ¶ 67.

Importantly, this is more than just a technical defect. According to at least one publicly available source,[10] there are *dozens* of potential medications (including antidepressants, mood stabilizers, anxiolytics, and antipsychotics with numerous

[9] Dr. Michlowski's report lists two medications at issue: "paleperdene [sic]" and "cognentin." (4:3); (App. 48). However, that report was never moved into evidence at the hearing. Under binding Wisconsin law, it was necessary for that report to be admitted into evidence in order to be considered at this recommitment/medication hearing. *Outagamie County v. L.X.D.-O.,* 2023 WI App 17, ¶ 36, 407 Wis. 2d 441, 991 N.W.2d 518.

[10] *See generally* Charles DeBattista & Alan F. Schatzberg, *The Black Book of Psychotropic Dosing and Monitoring*, 51(1) PSYCHOPHARMACOLOGY BULL. 8 (2021) (available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8063126/). (Listing various psychotropic medications).

different drug types and drug delivery methods) which could be at issue in these types of cases. Each medication has its own unique list of side effects and perceived benefits. As the *Melanie L.* court recognized, attention to detail matters when dealing with the intersection between medical science and a constitutionally protected right of refusal. *Melanie L.,* 2013 WI 67, ¶ 94. Mere reference only to generic "medication" is flatly incompatible with that holding.[11]

In addition, without being informed, via the testimony of the doctor, which medication was discussed with the individual, the circuit court necessarily faces a difficult task in assessing the reasonableness of the explanation given to the patient. For example, without knowing what medication is at issue, the court is deprived of necessary information to assess whether the seriousness of the side effects of that medication may have been minimized or inadequately conveyed to the patient, as the court of appeals has impliedly recognized in at least one recent unpublished but citable decision. *Milwaukee County v. D.H.,* No. 2022AP1402, ¶ 19, unpublished slip op. (Wis. Ct. App. March 7, 2023); (App. 70).

Finally, it should also be clear that proceedings which do not involve an open discussion of the specific

[11] Moreover, it is not unreasonable that, in exercising (or attempting to exercise) informed consent, knowing which specific substance will be injected into one's body is undoubtedly a crucial piece of information for an individual in determining whether to choose to accept the medication.

medication at issue—either during the communication of risks and benefits to the patient or during the examiner's testimony (or both)—opens the door to more serious concerns. A system which permits persons to be involuntarily medicated without ever being told the medication at issue—and without the court ever being informed what medication it is approving via an involuntary medication order—cannot plausibly be consistent with the general due process goals motivating our statutory scheme.

Thus, to the extent the court of appeals in this case relied on its unpublished decision in *P.D.G.* to conclude, contrary to plain statutory text and binding case law, that there is no requirement the drug at issue be named during the doctor's testimony, *D.E.W.*, No. 2023AP215, ¶ 12,[12] the court of appeals simply got it wrong.

This Court should therefore reverse the medication order due to this evidentiary shortcoming.

B. Dr. Michlowski's testimony otherwise fails to prove, by clear and convincing evidence, that Darren received a reasonable explanation as required by statute and common law.

As noted above, this Court—on two separate occasions—has emphasized the significance of Wis. Stat. § 51.61(1)(g)4's statutory requirement that, prior to finding an individual incompetent to refuse

[12] (App. 8).

medication, they must be given an explanation of the advantages, disadvantages, and alternatives to the proffered course of treatment. In *Virgil D.*, this Court spoke of the circuit court satisfying itself that the information had been "adequately" conveyed; in *Melanie L.*, it used a reasonableness criterion to reaffirm the importance of this legal requirement. *Virgil D.*, 189 Wis.2d at 5; *Melanie L.*, 2013 WI 67, ¶ 67.

Notably, *Melanie L.* makes clear that this reasonable explanation requirement is not merely aspirational guidance for examiners; rather, this Court has made clear that the provision of a reasonable explanation is an element that must be proved as part of the County's case-in-chief at a medication hearing. *Melanie L.,* 2013 WI 67, ¶¶ 67, 83.

Here, the evidence is insufficient and fails to satisfy the County's heightened burden of clear and convincing evidence. Even beyond the difficulty of assessing the reasonableness of an explanation when the particular medication is in question, Dr. Michlowski's testimony clearly failed in at least two other significant aspects: (1) Dr. Michlowski failed to confirm that he had communicated the advantages of medication to Darren and (2) Dr. Michlowski's discussion of side effects was insufficient.

As to the advantages, it is once again worth noting that it was the County which had the burden of proof; here, however, its inartful questioning of the expert leaves a glaring hole in its case-in-chief.

Specifically, the County asked two questions back-to-back without waiting for an answer from its witness: (1) "Were the advantages, disadvantages, as well as alternatives to accepting medication explained to [Darren]?" (2) And can you please cite one of the advantages?" (22:9-10); (App. 24-25). Dr. Michlowski, however, *never* offered a clear yes or no answer to the first question—and the County did not seek to obtain one, either. Instead, Dr. Michlowski used counsel's imprecise questioning as a launching pad to discuss what he perceived as the advantages to medication, which included "control[ling]" Darren's allegedly disruptive behavior while at the Wisconsin Resource Center. (22:10); (App. 25).

Thus, on this record, it cannot be conclusively determined whether, and to what extent, the advantages had been explained to Darren, as is statutorily required. Lacking any of the helpful explanatory detail that this Court discussed in its *Melanie L.* decision—such as testimony establishing the "timing and frequency" of the information's conveyance or the use of documentary proof to buttress the examiner's testimony, *Melanie L.,* 2013 WI 67, ¶ 67—the circuit court was simply left to assume that this information had been sufficiently conveyed. This, however, is a far cry from sufficiently "clear and convincing" evidence and, for that reason, the County failed to meet its evidentiary burden.

Second, the doctor's discussion of side effects is also woefully inadequate. Once again, given Dr. Michlowski's failure to specify the particular

medication at issue, it is difficult to confirm the information provided. In any case, assuming that the medications at issue are those which appear in the report (which, again, was not "evidence" for the purposes of this hearing, as it was not admitted), his communication of the side effects appears to have minimized the most serious risks Darren faced by focusing on only four side effects: (1) "dizziness," (2) "lightheadedness," (3) "upset stomach," and (4) a risk of developing diabetes. (22:11); (App. 26).

However, the Wisconsin Department of Health Services has published a series of informed consent forms for commonly-prescribed antipsychotic medications, all of which are available online and which contain much more robust information than the doctor testified he provided to Darren.[13]

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[13]https://www.dhs.wisconsin.gov/forms/medbrandname.htm.

Although the court of appeals rejected Darren's attempts to use those forms to expose the shortcomings in the information provided to Darren by holding that Darren's reliance on these sources was both undeveloped and forfeited, *D.E.W.*, No. 2023AP215, ¶ 12 n.4 (App. 8), Darren does not agree that this governmentally-published authority meant to assist physicians in obtaining informed consent—the very issue at stake in this litigation—is irrelevant to his sufficiency challenge. And, in any case, it is well-settled that a sufficiency challenge need not be raised below for an appellate court to consider it. Wis. Stat. § 805.17(4). Moreover, the information contained in this government-issued form are the type of facts of which this Court can take judicial notice. Wis. Stat. § 902.01.

Contrary to the relatively limited information Darren received, it would appear, with respect to the paliperidone (one of the medications listed on the report), Darren should have been told about the following "common" side effects which include:

> difficulty with speaking; drooling; fast, pounding, or irregular heartbeat or pulse; loss of balance control; muscle trembling, jerking, or stiffness; restlessness; shuffling walk; stiffness of limbs; uncontrolled movements, especially of face, neck, and back; fear or nervousness; headache; nausea; sleepiness or unusual drowsiness; weight gain; increased HDL cholesterol; increased LDL cholesterol.

Darren was also not told about the complete list of "less common" side effects which can include

> chest pain; cold sweats; confusion; cough; difficulty with swallowing; dizziness; excessive muscle tone; fainting; inability to move eyes; increased blinking or spasms of eyelid; increased blood pressure; mask-like face; muscle tension or tightness; pain in arms or legs; slow heartbeat; slowed movements; slurred speech; sticking out tongue when not meaning to; tic-like (jerky) movements of the head, face, mouth, or neck; trembling and shaking of fingers and hands; tremors; trouble with breathing or speaking; uncontrolled twisting movements of neck, trunk, arms, or legs; unusual facial expressions; unusual weakness; acid or sour stomach; back pain; belching; blurred vision; faintness or lightheadedness when getting up from a lying or sitting down position; dry mouth; fever;

> heartburn; indigestion; lack or loss of strength; stomach discomfort, upset, or pain; decreased sexual drive or function.

And, with respect to "rare" side effects, Darren should have also been told that medicine could cause "face, tongue, or throat swelling; increased upper respiratory tract infections; heart attack; severely low blood pressure; rash; pneumonia; breast swelling; intestinal obstruction; seizures; abnormal or flutter heartbeat."

Thus, while DHS guidance lists dozens of potential side effects, Dr. Michlowski testified that he told Darren about only four, one of which—the risk of developing diabetes—is not included in that guidance. Instead of being told that this medication could cause incredibly serious risks—such as an increased risk of suicidal thoughts,[14] a particularly relevant concern for an inmate facing lifetime incarceration in Wisconsin's high-security prisons—Darren was only told about the most generic and benign side effects, such as an upset stomach or lightheadedness.

Likewise, the doctor's explanation of the other medication listed—"cogentin"—also omits serious side effects listed on the DHS guidance, such as painful urination, vomiting, or even hallucinations, a particularly salient consideration for a person diagnosed with schizoaffective disorder.

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[14] According to the DHS informed consent form, "This medication, in rare cases, has caused new or worsening suicidal thoughts."

Merely conclusory testimony like that presented in this case is simply insufficient under the law, which requires specificity. *Melanie L.*, 2013 WI 67, ¶ 94. When the examiner fails to take the time to convey the correct information, reversal should therefore be the result, as the court of appeals has repeatedly concluded. *See e.g., Eau Claire County v. Mary S.*, No. 2013AP2098, ¶ 15, unpublished slip op. (Wis. Ct. App. Jan. 28, 2014) (testimony that a discussion occurred without explanatory detail does not enable court to assess reasonableness of that discussion);[15] *Waukesha County v. Kathleen H.*, No. 2014AP90, ¶ 9, unpublished slip op. (Wis. Ct. App. June 25, 2014) (conclusory report insufficient to establish provision of reasonable explanation);[16] *D.H.*, No. 2022AP1402, ¶ 16 ("significant gaps" in record sufficient to undermine existence of reasonable explanation).[17]

Accordingly, because Darren did not receive an adequate explanation and because the County failed to elicit sufficient testimony to prove by clear and convincing evidence that a reasonable explanation occurred, this Court must reverse.

C. This Court's decision in *Christopher S.* does not modify the burden of proof for the reasonable explanation element.

Despite the seemingly strong state of the law in favor of a robust reasonable explanation requirement,

[15] (App. 60).
[16] (App. 90).
[17] (App. 79).

and as indicated in the petition for review, the court of appeals has not consistently endorsed that reading of the statute. In fact, at least one unpublished decision from the court of appeals rejects outright any argument "that *Melanie L.* requires detailed testimony about what the patient was told." *Marquette County v. T.F.W.,* No. 2015AP2603-FT, ¶ 12, unpublished slip op. (Wis. Ct. App. March 24, 2016). (App. 67). To support this contrary reading of the reasonable explanation requirement, the court of appeals in *T.F.W.*—and corporation counsel who frequently rely on that authority to argue against reasonable explanation arguments on appeal—relies on this Court's decision in *Christopher S.* as apparently modifying the requirements for the reasonable explanation requirement.

This case therefore presents an opportunity to clarify what should be obvious about *Christopher S.*—that it did not modify or overrule past precedents of this Court establishing that the reasonable explanation requirement is an element to be proven by clear and convincing evidence. *Melanie L.,* 2013 WI 67, ¶¶ 67, 83.

Notably, *Christopher S.* does not meaningfully engage with the reasonable explanation requirement in its short discussion of the sufficiency challenge at issue in that case. Although at first blush the case therefore appears to endorse a relatively scant record with respect to the reasonable explanation requirement, this apparent omission is neither an oversight nor an attempt to rewrite the reasonable

explanation requirement. For evidence, one need only look to the concurrence/dissent authored by Justice Abrahamson, which points out that the record evidence on this point, while unmentioned in the majority opinion, was nevertheless sufficient. *Christopher S.*, 2016 WI 1, ¶ 95 (Abrahamson, J., *concurring/dissenting*).

Given that "ample evidence" in the record, a lengthier explanation was simply not required. *Id.*, ¶¶ 95-96. Yet, Justice Abrahmson went on to remind circuit courts that "given the significant constitutional rights at stake, the County should develop a sufficient record to show that, for instance, the person was advised of the advantages, disadvantages, and alternatives to treatment, in order to enable appellate review." *Id.*

If *Christopher S.* intended to overrule its holding in *Melanie L.,* it would have been required to explain why under the controlling test governing this Court's application of the doctrine of *stare decisis*. *Johnson Controls, Inc. v. Emps. Ins. of Wausau*, 2003 WI 108, ¶¶ 95, 264 Wis. 2d 60, 665 N.W.2d 257. The decision, however, reflects no such analysis and, given Justice Abrahamson's partial concurrence, it is clear that no change in the law was contemplated.

Accordingly, because the dictates of *Melanie L.* with respect to the reasonable explanation requirement remain "good law" notwithstanding any inadvertent confusion caused by *Christopher S.*'s brief treatment of the issue, this Court should therefore

reject any invitation to apply a lesser standard in this case and instead, relying on its holding in *Melanie L.*, reverse.

III. The County failed to prove that Darren was incompetent to refuse medication.

A. The County failed to prove that Darren was incompetent.

1. Darren was not incapable of expressing an understanding under Wis. Stat. § 51.61(1)(g)4.a.[18]

Case law clearly establishes that, when considering this pathway toward involuntary medication, the circuit court should lean heavily on the five-factor test set forth in *Virgil D.*, 189 Wis. 2d at 14-15. In this case, however, there was no meaningful discussion of any of the factors. For example, Dr. Michlowski did not address the first factor— whether Darren was "able to identify the type of recommended medication." *Id*. at 15. This is especially problematic because, as stated above, Dr. Michlowski did not himself identify the "recommended medication" at issue during his testimony. For the same reason, it is therefore impossible to conclude whether the second

[18] Although the circuit court found that Darren was incompetent under the second standard, the doctor's inconsistent testimony actually incorporated language from both standards. (22:11). Counsel will address both potential criteria here.

factor—that Darren "previously received the type of medication at issue"—was satisfied. *Id.*

As to the third factor—whether Darren could "describe how the effects were either harmful or helpful"—Darren clearly told the doctor the medication helped him sleep. (22:11); (App. 26). Yet, he disagreed with the doctor as to its efficacy during daytime hours. (22:11); (App. 26). Rather than proving incompetence, this testimony speaks to Darren's ability to identify at least one benefit, a required consideration under that factor. Finally, as to the fourth and fifth factors, the doctor simply offered no testimony one way or the other.

Instead of relying on the *Virgil D.* factors, Doctor Michlowski referenced Darren's alleged "lying" about side effects in the past, testimony that was rank hearsay and which should have been excluded from consideration. (22:12); (App. 27). And, in any case, purported "lies" about side effects in the past do not neatly map on to any of the requisite factors, nor does the doctor's testimony about Darren's willingness to take the medication in exchange for more food. (22:12); (App. 27). If, as the doctor testified, the medications are causing diabetes or diabetes-like symptoms, extreme hunger is, in turn, a symptom of that disease.[19] Darren's attempts to treat his side effects via the only mechanism available to him—using his

[19] *See* https://my.clevelandclinic.org/health/symptoms/24637-polyphagia-hyperphagia.

medication as a bargaining chip—does not clearly demonstrate an incompetent individual; rather, it shows a rational mind trying to ameliorate a very real physiological distress.

More to the point, even if Darren's desire for additional food has no connection to medication, it does not follow that his choice in this matter necessarily means he is incompetent. Thousands, perhaps millions, of Americans make choices every day that put them at risk of diabetes, heart disease, or stroke via dietary choices, notwithstanding genetic or other risk factors. This is classically the kind of individualized decision our society, founded on libertarian ideals, views as outside the realm of state control. The mere fact that Darren is a mentally ill person presently incarcerated should not change the application of those principles.

Thus, rather than articulating how Darren was incapable of expressing an understanding, the doctor relied principally on irrelevant evidence like Darren's disagreements with the medication recommendations, his decision to prioritize an immediate hunger over a hypothetical risk of diabetes, and his efforts to evade unwanted medication by lying about side effects. None of this testimony establishes an inability to understand the risks and benefits of medication; instead, they are nothing more than attempts to use the mere fact of his refusal as a means of proving incompetence. Because the County is prohibited from doing so, *Virgil D.,* 189 Wis. 2d at 15, the evidence presented by the County does not satisfy the

"incapable of expressing an understanding" pathway toward involuntary medication and the order must be reversed.

2 Darren was not incapable of applying an understanding.

While Dr. Michlowski's initial testimony was that Darren was incompetent under the first standard—that he was incapable of expressing an understanding—as he continued to testify, the doctor eventually referenced the second standard, as well. (22:12); (App. 27).

As the record shows, however, Dr. Michlowski's primary basis for finding Darren incompetent under this standard was Darren's refusal to take medication and his belief that, aside from helping him sleep, the medicine did not benefit him. (22:11); (App. 26). The doctor also cited Darren's attempts to lie about side effects, apparently as a means of evading unwanted medication and that Darren, contrary to the doctor's opinion of what was right and proper, ate too much food. (22:12); (App. 27).

However, the statute required the County to prove that Darren was incapable of making a connection "between an expressed understanding of the benefits and risks of medication and the person's own mental illness." *Melanie L.,* 2013 WI 67, ¶ 71. As noted above, the issue was whether Darren was making an *informed* choice, *not* whether he was making the *wrong* choice. In the doctor's view, because Darren eats too much, does not want to take

medication and will do anything to avoid doing so because he disagrees with the doctor's opinion that medication is needed, he *must* be incompetent. (22:11-12); (App. 26-27). Yet these are all irrelevant considerations given the presumption of competency and the well-settled principle that a person's disagreement or refusal, standing alone, is not a sufficient basis to involuntarily medicate an individual.

The circuit court's oral ruling reinforces that this medication order was not being entered because Darren was incompetent but, rather, to force him to comply while incarcerated. (22:27-28); (App. 42-43). Based on the doctor's testimony, the circuit court believed Darren was "using medication as a tool to get what he wants." (22:27); (App. 42). The court therefore issued its medication order primarily to take this "tool away," not because it believed Darren was incompetent. In fact, the requisite statutory language was never cited in the court's oral ruling.

Because the doctor's paternalistic judgments, as expressed in his deficient and conclusory testimony, do not meet the legal standard, the underlying medication order must be reversed.

B. The Court should apply *Melanie L.* in resolving this appeal. *Christopher S.* addresses an inapplicable legal question and does not purport to modify *Melanie L.*; if it is to be read as such, it must be overruled as it stands in clear conflict to that authority.

As stated above, this Court's decision in *Melanie L.* stands for the unambiguous proposition that, to constitute clear and convincing evidence of incompetency, the County must proffer more than merely conclusory statements from a testifying examiner. Instead, the County must be able to explain ***how*** the examiner reached their conclusion. *Melanie L.*, 2013 WI 67, ¶ 75. This determination makes sense as, after all, whether a person is incompetent is a legal, not factual, determination. *Id.*, ¶ 39. Merely answering "yes" when asked whether a person is incompetent is therefore categorically incapable of permitting a court to assess whether the evidence *actually* corresponds with that opinion. In other words, there is nothing "clear" or "convincing" about merely conclusory statements of opinion regarding a legal element, when that testimony is unsupported by sufficient explanatory detail.

In this case, however, the court of appeals reads the law, and this Court's decision in *Christopher S.*, differently. In the court of appeals' view, conclusory testimony *is* sufficient evidence; gaps in the record simply do not matter as long as the examiner proffering that conclusory testimony is deemed

credible by the trial court. *D.E.W.,* No. 2023AP215, ¶¶ 14, 17. (App. 9, 12). Thus, even though Darren identified numerous shortcomings in the examiner's testimony, the court of appeals effectively concluded those shortcomings were irrelevant. Because the examiner was asked a leading question as to whether Darren was competent which properly recited the statutory standard—and the examiner said "no" in response (22:9); (App. 24)—it appears the court of appeals felt duty-bound, under its reading of *Christopher S.,* to affirm. *D.E.W.,* No. 2023AP215, ¶ 17. (App. 12).

The problem, however, is that—properly understood—*Christopher S.* does not actually support this broad interpretation, one that suggests *Melanie L.* has been somehow impliedly overruled. To understand why, it is helpful to begin with that case's procedural history.

Notably, *Christopher S.* was certified to this Court from the court of appeals with respect to a completely distinct issue—the constitutionality of Wis. Stat. § 51.20(1)(ar). *See Winnebago County v. Christopher S.,* No. 2014AP1048, 2015 WL 1443128 (Wis. Ct. App. April 1, 2015) (petition for certification), *certification granted,* No. 2014AP1048 (Wis. May 12, 2015). (App. 93).

Importantly, in *Christopher S.*, the court of appeals' certification request on the constitutionality issue merely referenced the medication issue

presented in the instant case as a secondary issue, cabined to a single footnote:

> Christopher also asserts on appeal that the County failed to show by clear and convincing evidence that he was incompetent to refuse medication or treatment because the testimony presented at the hearing on this issue "merely parroted the statutory language without providing details of the information Christopher was given" pursuant to Wis. Stat. § 51.61(1)(g)4. In light of the Wisconsin Supreme Court's recent decision in *Outagamie County v. Melanie L.*, 2013 WI 67, ¶¶ 67, 75–78, 94, 349 Wis.2d 148, 833 N.W.2d 607, and the testimony presented to the circuit court on this issue in this case, Christopher's assertion appears to have merit. Acceptance of this certification would provide the supreme court with an opportunity to clarify or expound upon *Melanie L.*

Id. at *8 n.5. (App. 107).

For context, it is important to remember that, while one flaw in the doctor's testimony in *Melanie L.* was that it failed to accurately recite the statutory standard, *Melanie L.*, ¶ 95, this Court was also clear that the problems in that record went deeper. In addition to holding that the County should have "more carefully articulated its case" by referencing the correct standard, the Court also held that the County's evidence was otherwise insufficient, notwithstanding this misstatement of the legal standard. *Id*. Thus, *Melanie L.,* as the court of appeals correctly intuited in its *Christopher S.* certification, requires the examiner

to do more than just cite an incompetency standard in a conclusory fashion; instead, the "county must prove" this fact by clear and convincing evidence. *Id.*, ¶ 94.

Although this Court accepted the petition for certification and was therefore in a position to reaffirm its (then) recent holding in *Melanie L.*, the medication issue remained a secondary focus and appeared only in the concluding paragraphs of this Court's opinion. *Christopher S.,* 2016 WI ¶¶ 49-56.

Notably, in its brief discussion of the medication issue, this Court's focus targeted an entirely distinct issue from the question posed in the certification; in this sense, it is wholly unresponsive to those concerns expressed by the court of appeals in the certification footnote. Rather than directing its attention to the broader sufficiency claim, this Court instead resolved the case with an exceedingly narrow application of *Melanie L.*—an authority which it nevertheless viewed as "instructive" with respect to the overall requirements for an involuntary medication hearing. *Christopher S.*, 2016 WI 1, ¶ 51.

Thus, rather than focusing on the County's overall evidentiary burden, the *Christopher S.* majority addressed only the first part of its holding from *Melanie L.*—that an examiner needs to accurately state the incompetency standard in his testimony and that failure to do so can be reversible error. *Id.*, ¶ 53. In contrast to *Melanie L.*, instead of making any linguistic errors when phrasing the legal standard, the witness in *Christopher S.* gave an

appropriate "yes" answer when asked a conclusory question as to whether the patient was "substantially incapable" of applying an understanding of the requisite information. *Id.*, ¶ 55. Focusing only on whether the examiner's testimony accurately tracked the statutory standard, this Court therefore affirmed. *Id*. ¶ 56. In doing so, it simply did not address the second part of its prior decision in *Melanie L.*, explaining that the County also needs to supply the "how" underlying the examiner's opinion. *Melanie L.,* 2013 WI 67, ¶ 75.

Read narrowly, *Christopher S.* therefore reaffirms one limited aspect of *Melanie L.* and simply does not address or modify *Melanie L.*'s broader holdings. Lacking a clearer signal—and because this Court never indicated it was modifying or overruling *Melanie L.* and instead relied upon it as an "instructive" case in reaching its holding—the court of appeals misread that authority in its opinion here. There was simply no basis for the court of appeals to presume that *Christopher S.* changed the standard set forth in *Melanie L.*, permitting it to ignore *Melanie L.'s* otherwise clear-cut admonitions against merely conclusory evidence at medication hearings. As the instant case does not involve a misstatement of the statutory standard—and instead is an invitation to apply *Melanie L.*'s broader holding that requires the County to satisfy its burden of proof by nonconclusory testimony—the court of appeals erred in its reliance on this inapplicable precedent and, in accordance with *Melanie L.,* this Court should affirm.

In doing so, this Court will reaffirm the viability of *Melanie L.,* and avoid the necessity of overruling *Christopher S.* as contradictory to *Melanie L.* After all, if, as the court of appeals has suggested, all that is required at a medication hearing is an exchange of leading questions followed by conclusory "yes" or "no" answers, then *Christopher S.* is incompatible with *Melanie L.'s* insistence that a medication hearing is a meaningful adversarial contest in which due process principles and the applicable burden of proof are fully respected.

In other words, if this Court is to credit *Christopher S.* with doing, perhaps unintentionally, what the Court never claimed to be doing openly—overruling *Melanie L.*—then *Christopher S.* cannot stand. It is "unsound in principle" and "unworkable in practice." *See State v. Johnson*, 2023 WI 39, 407 Wis. 2d 195, 990 N.W.2d 174 (quoting *Johnson Controls*, 2003 WI 108, ¶¶ 98-99).

It is hard, seemingly impossible, to square the conclusory "yes" or "no" answers seemingly approved of in this reading of *Christopher S.* with the applicable burden of proof, which requires clear and convincing evidence. Moreover, such a rubric appears to conflate factual testimony (the examiner's opinion that the person is incompetent) with whether the testimony satisfies a purely legal standard. While the examiner may believe the answer is "yes" when asked whether the person is incompetent, such a statement gives the circuit court no basis on which to make the requisite legal conclusion. Finally, it is also difficult to

understand how such a proceeding—which apparently can be conducted over the course of a few minutes given a few conclusory questions—is at all sufficient to satisfy due process guarantees.

Accordingly, this Court should use this opportunity to clarify that its decision in *Christopher S.* was a limited one that did not otherwise overrule or modify *Melanie L.* However, if this Court disagrees, it should then overrule *Christopher S.* in order to preserve a committee's due process rights in involuntary medication proceedings.

CONCLUSION

For the reasons set forth herein, this Court should reverse the court of appeals.

Dated this 10th day of January, 2024.

Respectfully submitted,

Electronically signed by Christopher P. August

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 8,694 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 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.

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Dated this 10th day of January, 2024.

Signed:

Electronically signed by
Christopher P. August
CHRISTOPHER P. AUGUST
Assistant State Public Defender