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**SUPREME COURT**

STATE OF WISCONSIN  
IN SUPREME COURT  
Case No. 2023AP396-CR

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STATE OF WISCONSIN,

Plaintiff-Appellant-Petitioner,

v.

LOGAN T. KRUCKENBERG ANDERSON,

Defendant-Respondent.

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RESPONSE TO PETITION FOR REVIEW

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## INTRODUCTION

This case involves the suppression of statements made to police by a 16-year-old child following nearly 24-hours of on-and-off questioning. Police first contacted Logan Kruckenberg Anderson at 1:58AM on January 9, 2021. Logan was asked questions sporadically until just after 6:00AM. Logan was taken to a local police station for more questioning at just before 2:00PM and was picked up at just after 5:00PM. Around 11:00PM, local, state, and federal law enforcement arrived where Logan was staying and asked him to answer more questions in the next town over.

During this third interview, the lead interrogator—DOJ-DCI Special Agent James Pertzborn—repeatedly accused Logan of lying, said he was there to help Logan, and intimated he had some say in what could happen if Logan confessed. When Logan refused to answer the way Pertzborn wanted, he cut Logan off, raised his voice, and relied on Logan's maternal figure to illustrate Logan's statements were not believable.

When deception and confrontation failed, Pertzborn moved to moral appeals, stating there were people who care and others "who make a mistake and they're just evil about it, they don't give a shit." Eventually, Logan asked to speak with Pertzborn one-on-one. There, Pertzborn presented himself as a father figure by taking Logan's hand and reiterating how he

could help Logan if he cooperated. Pertzborn concluded by saying they needed to give “that precious child of yours a proper burial,” recover the body, and that Logan had to tell him “where she’s at right now.”

The court of appeals held that all statements Logan made from this point were involuntary, due to the cumulative coercive effect of the techniques used by Pertzborn.<sup>1</sup>

According to the court of appeals, the “proper burial” comment “was the culmination of Pertzborn’s high-pressure interrogation techniques under the particular circumstances here. It happened to have the intended effect. Kruckenberg responded with highly incriminating statements.” *Kruckenberg*, 2023 WI App 45, ¶61; App.32. As such, the court suppressed all statements following Pertzborn’s “proper burial” comment.

The State disagrees and petitions for review.

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<sup>1</sup> Those techniques include:

- “confrontational and accusatory interrogation techniques,”
- “emotional and moral appeals,”
- leveraging a quasi-maternal figure to put pressure on Logan,
- “misleading claim[s]” that he was there as Logan’s advocate and to help him,
- implied promises of leniency,
- conflating his offers to help Logan with those of the quasi-maternal figure, and
- “physicality, implying a parental familiarity.”

*State v. Kruckenberg*, 2024 WI App 45, ¶¶52-61; App.28-33.

## ISSUE PRESENTED

Per the petition for review, the issue in this case is whether “the totality of these circumstances [was] enough to render [Logan’s] confession involuntary.” Pet. for Review at 7.

## CRITERIA FOR REVIEW

This case does not meet any established criteria for review, as the State is simply seeking error-correction.

The State does not explain in its Statement of Criteria Supporting Review how the court of appeals’ opinion in this case is contrary to established case law. In fact, the parties have always agreed on the controlling law. *Infra* at 24. What the petition reveals is that the State takes issue with the lower courts considering the aggregate effect of numerous police tactics that the State asserts have not been found to be individually coercive. *Infra* at 24.

This case involves the application of well-settled law to the facts of this case, and there is not a significant question of constitutional law. What the State frames as a conflicting opinion by the court of appeals was the court considering the cumulative effect of numerous coercive police tactics in its totality of the circumstances analysis. *Infra* at 24-25. This Court recently approved of analyzing police tactics in the aggregate to determine if they were coercive. *State v. Vice*, 2021 WI 63, ¶48, 397 Wis. 2d 682, 961 N.W.2d

1. Thus, the State is asking this Court to apply well-settled law to the specific facts of this case—i.e. reweigh the totality of the circumstances.

This case does not meet any established criteria for review because it is fact-specific and the law regarding how to analyze voluntary confessions is not reasonably disputed.

This Court should deny the petition for review.

### **STATEMENT OF THE CASE AND FACTS**

At 2:00AM on January 9, 2021, Deputy Derek Whitcomb arrived at a residence in Albany following a report of a missing infant. R.125:8-9, 52. The infant was believed to be with the father, sixteen-year-old Logan Kruckenberg. R.191|1:03-1:27;<sup>2</sup> R.125:11. The residence was that of Logan's girlfriend, Lauren.<sup>3</sup> R.125:11-13. Between 2:00AM and 6:00AM, deputies Zachary Degner and Tanner Gilbert, and Detective Christopher Fiez arrived at the residence. R.125:13, 14, 20. Officers questioned Logan on and off for four hours. Logan explained that Lauren gave birth

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<sup>2</sup> The exhibit contains multiple files. The correct one is the .mp4 file located in the folder beginning "DerekWhitcomb">"Stream 1." This response does not reference any other files in this exhibit, and will refer to the video as R.191.

<sup>3</sup> The parties used pseudonyms to refer to non-police parties other than Logan during briefing, whereas the court of appeals used initials (e.g. A.B., C.D., and E.F.). Given the State's continued use of pseudonyms in the petition for review, this response will use the same for consistency.



several days prior. Logan told police he gave the infant to his friend Tyler to take to an adoption agency. *See generally* R.191; R.125:36-37, 72. Logan was also questioned in a squad car for forty minutes. R.126:11, 16.

Around 6:00AM, Whitcomb drove Logan to his mother's apartment. R.125:27, 29. He brought Logan to the door, had him tell his mom what was going on, and left. R.191 | 4:06:17-4:07:15; R.125:31.

Roughly eight hours later, at 2:00PM, Fiez and Albany Police Chief Ritter showed up unannounced to Logan's friend's house, where Logan was staying and asked Logan to come to the Albany Police Department ("APD") for additional questioning. R.127:1, 17, 19; R.132:92.

Before they departed, Fiez was alone with Logan in the squad car while they waited for Ritter. R.127:63. Fiez ultimately took Logan's phone and placed it in the front seat. R.192 | 67710047 | 0:00-2:30; R.112:1-3; R.127:64.<sup>4</sup> Ritter got into the car, and they left for Albany PD. R.127:65.

At Albany PD, Ritter told Logan they were going to keep his phone because, "everything you ever did on this is inside of this phone, whether you deleted it or not." R.192 | 67710047 | 37:26-38:50; R.112:33. Ritter

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<sup>4</sup> Because R.192 includes multiple videos, citations will reference "R.192 | XXXXXXXX | timestamp." "XXXXXXX" represents the eight digits at the end of the folder title. From there, the video is always the .mp4 file in the "Stream 1" folder.

told Logan that there were people with dogs looking for the baby's "cadaver." R.127:67; R.192|67710047|39:04-38:50; R.112:33.

Officers continued to confront Logan with incredulity. R.192|67710047|39:12-40:57; R.112:34. Logan began to cry. R.112:34. He asked for his phone, and Fiez said no. R.192|67710047|43:50-44:00; R.127:83-84. Ritter told Logan that this is "not going away." R.112:39.

Police called Delores to pick up Logan, which she did around 5:07PM—three hours after Logan was brought there. R.127:81; R.100:2.

Around 11:00PM, DOJ-DCI Special Agent James Pertzborn, FBI Special Agent Bryan Baker, and numerous local law enforcement officers showed up at Delores' residence. R.132:96-97. Pertzborn asked Logan to accompany them to the Brodhead Police Department ("Brodhead"). R.124:8-9; R.132:98; R.148:8.

Logan told Pertzborn that he had already spoken to police, R.124:74; still, Pertzborn said he "needed" to ask Logan questions. R.124:16. Pertzborn told Logan he was not under arrest and did not have to answer questions. R.124:76. Logan asked that Delores be present for the interview; Pertzborn assured Logan he would not talk to him about anything without her. R.124:24, 75. Delores asked if Logan could ride with her to Brodhead, and was told no. R.133:38.

Before departing, Pertzborn asked Logan if he had a phone. Logan showed Pertzborn his phone. Pertzborn asked him how to get into it. R.124:21-22; R.132:98.<sup>5</sup> Then, Logan was escorted to Pertzborn's vehicle. R.193|1:58-2:02. They left at approximately 11:30pm. R.193|0:00-0:07, 1:58-2:25.

They arrived in Brodhead at 12:06AM. R.124:78.<sup>6</sup> An armed, uniformed officer led Pertzborn, Baker, and Logan to the interrogation room, with Logan walking between Pertzborn and Baker. R.124:81; R.190|12:06:00AM-12:06:40AM.<sup>7</sup> Pertzborn directed Logan to sit in the chair opposite the door they entered, while Pertzborn and Baker took chairs that placed themselves between Logan and each closed door. R.190|12:06:24AM-12:06:50AM; R.124:81-82. Before Delores arrived, Pertzborn questioned Logan about another phone found at his mom's house. R.190|12:22:04AM-12:24:20AM.

Delores finally arrived at about 12:40AM.<sup>8</sup> Pertzborn told Delores and Logan that they were being

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<sup>5</sup> This was a different phone than the one Fiez seized. R.132:98.

<sup>6</sup> Pertzborn never explained what occurred between when they left at 11:27PM and arrived in Brodhead 39 minutes later at 12:06AM—other than the “10-15 minute” drive. R.124:78.

<sup>7</sup> R.190 contains multiple folders; however, this response is only concerned with the “Brodhead Interview.”

<sup>8</sup> After Pertzborn left with Logan, video shows officers questioning Delores for 40 minutes before she was able to leave. R.193|6:44-45:00.

recorded and pointed to the camera. R.115:25; App.110. Pertzborn told them that he needed to talk to Logan but Logan was not under arrest and could leave. R.115:23-26; App.108-111; R.190|12:38:30AM-12:42:25AM. Pertzborn immediately told Logan: “I’m a super nice guy, so I recommend talking to me because I am in a position where I can help. Okay? As time moves on, as you know, those things kind of go away, and I can’t always help. Alright?” Pertzborn told Logan that things get taken out of his control, so he tries to convince people it is best to work with him early. R.115:26-27; App.111-12; R.190|12:42:25AM-12:43:24AM. Pertzborn told Logan that when things go too far, he is the one “that can kind of come in and talk to them; deal with the issue and help the situation.” R.115:27-28; App.112-13; R.190|12:44:10AM-12:44:48AM.

Pertzborn asked Logan if he knew why he wanted to talk to him, and Logan referenced the hours-long police contact at Lauren’s and being at “the cop shop the whole day.” R.115:28; App.113; R.190|12:44:48AM-12:45:00AM. When asked again, Logan stated “[b]ecause as of right now we have no idea where that child is.” R.115:28; App.113. Pertzborn leaned forward, taking a more stern and authoritative tone, and said “No, some of us do.” R.115:28; App.113; R.124:42. He told Logan that they had “a whole bunch of information,” had been doing “background,” and he needed Logan to be honest with him. R.115:28; App.113; R.190|12:45:07AM-12:46:04AM. As Logan explained what happened, Pertzborn interrupted to tell him what Logan was saying was “inconsistent”

with what Lauren had told them. Logan said he was just telling what he knew. R.115:29-30; App.114-15; R.190 | 12:48:20AM-12:48:36AM.

Logan attempted to give additional information, but Pertzborn repeatedly cut him off. R.115:35; App.120; R.190 | 12:55:10AM-12:55:20AM. He raised his voice and this exchange followed:

S/A Pertzborn	No hold on, I know you aren't telling me the truth at this time and I have a problem with that because how am I going to help you when you are not telling me the truth. I can disprove it. Okay? And I need you to jump on board with me because if I am going to help yah, I'm putting my neck way out there for yah. Okay? You need to step on board with me and stop with anymore lying. You need to! You need to, you need to, you need to.
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D[elores]	You gotta tell the truth okay?
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S/A Pertzborn	Listen, I...I will listen to you until the cows come home. The problem being I will only listen to the things I know are true. I'm not going
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to listen to something that I know is 100% a lie, and you are going to go how in the fuck does this guy know. Right? You're wondering how does he know. I'm going to explain that to yah. But for me to be able to put in a report that you have been cooperative so that I can help you. You're going to have to come with more of the truth. Alright? You've already dug in a little bit a[n]d I'm just going to tell you right now. I'm going to hand my hand down to you and lift you out of it. Alright? I ain't mad at yah, because I knew it was going to take a little bit of this. Everybody always does. You need to come forward. I can't help you, I'll step over you to help you, but you need to at least show me you are going to help yourself a little bit, because this is like simple, you understand? Please...don't continue down this path.

Logan

I'm telling.

S/A Pertzborn	Don't continue
Logan	the truth.
S/A Pertzborn	No you are not. You're not! You know him a lot better than I do and I know I am looking at your eyes and you're going oh hell no.
D[elores]	You gotta tell the truth buddy. Please...please tell the truth.
S/A Pertzborn	You need...that's...I'm so glad she's here
D[elores]	Honey I can't help you if you can't tell the truth.
Logan	I'm telling the truth.
S/A Pertzborn	Nothing
D[elores]	I will do anything in my power to help you if you tell the truth honey.
S/A Pertzborn	Nothing that has happened here is too far from redeeming you. I can help you still, and I am willing to
D[elores]	I am too.
Logan	Can I...
S/A Pertzborn	There are people that are going to step up and help

you, but we're not, we can't do that until you start realizing what's going on.

Logan

Can I ask you what the truth is then?

S/A Pertzborn

I am going to allow you the opportunity to tell me the truth. Because when I write it, if I sit there and have to say I had to do this, this and this to get you to even step on it. What kind of cooperation is that? There's no, there's no redeeming part of you that if, if you're not the one that is doing it. Right? If I have to continue to like prod you along [...] Logan I'm gonna just take a break and I'm going to let you understand something. Every single path you take we already know a bunch of things about. Alright? I need you to bring it back and say listen Jim give me an opportunity to show you I am telling you the truth, because you're not right now, and I'm just going to forget about it and we are going to start over again. Do you understand? Please don't do this be honest for yourself. Alright?



D[elores] We can't help you if you won't tell us okay? But we will do everything in our power to help you.

S/A Pertzborn Everything in our power to help you.

D[elores] I promise Logan.

S/A Pertzborn That's why I'm here is to help you.

D[elores] I'm not your mother.

S/A Pertzborn But we can't do this anymore. We can't do the lies. I can't possibly, I can't possibly do that. Alright?

D[elores] Logan what did you guys do with the baby after she was born?

Logan I'm telling the truth.

S/A Pertzborn You aren't. You aren't telling the truth. Alright? I think you know it and we know it, and there is two types of people, there's people that do things and have a soul and realize oh my lord I've done something that I can't fix and they feel bad about it. Or there is the other person, who make a mistake and they're just evil

about it, they don't give a shit. What type of person are you? What type of person are you?

Logan

I care.

S/A Pertzborn

You do care. That's why you're being given this opportunity to talk to me about this. That is why you are able to even work with me right now. Don't blow that chance. Okay? Please, you are not a bad person. You made a mistake.

R.115:36-37; App.121-22; R.190 | 12:55:20AM-1:00:57AM.

As the interrogation continued, Pertzborn emphatically pointed his finger down at the table and Logan moved further away from him. Logan asked if it could be one-on-one. Pertzborn said he was "willing to do that." Before leaving, Delores told Logan to be honest. R.115:38; App.123; R.190 | 1:00:57AM-1:01:45AM.

Once alone, Pertzborn told Logan to come closer and grabbed Logan's hand. R.115:38; App.123. He told Logan that he would help him through it, as long as Logan was honest. Logan asked what would happen. Then they had this exchange:

Pertzborn

Sure, what is going to happen, I don't know, but

what I know is going to happen because I am going to ... write a report saying how cooperative and how apologetic you are for what happened. I'm going to be able to do that. Which weighs ... a whole lot on where this all can go. Alright?

We need to do a couple things. [W]e need to bury, give that precious child of yours, a proper burial.

Logan

A burial. Yeah.

S/A Pertzborn

We need to recover that body. Okay? I need you to tell me where [the child's] at right now.

R.115:38; App.123; R.190|1:01:45-1:02:49. At that point, Logan began to make incriminating statements.

Logan moved to suppress statements made during all interrogations beginning with the initial contact with police in the early hours of January 9th through later interrogations that are not the subject of the State's petition. R.83; R.153. The circuit court held seven evidentiary hearings. Witnesses included law enforcement officers, as well as Delores and Dr. Ryan Cutler—a psychologist retained by Logan to

discuss interrogation tactics and psychological factors that influence a person's ability to resist questioning.<sup>9</sup>

The court issued an oral ruling. Ultimately, the court did not suppress the statements made at Lauren's residence, the first interrogation at Albany PD, or after Logan was formally arrested and Mirandized.<sup>10</sup> R.170.

The court did suppress the statements taken in the middle of the night on January 10th. The court considered the following factors as it relates to voluntariness:

- The length and frequency of the interrogations, given that the Brodhead interrogation was part of a series of interviews all within twenty-four hours. R.196:25; App.74.
- Before they left for Brodhead, Logan "said something to the effect I already talked to the police meaning it seems why do I have to go again?" R.196:25; App.74; *see* R.124:16.

The court also relied on the "nature of the questioning," finding that although it began "a little more open and less confrontational," Pertzborn shifted tone and started accusing Logan of lying. He also made

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<sup>9</sup> Dr. Cutler also submitted a report. R.144.

<sup>10</sup> The arrest took place after Logan made incriminating statements at Brodhead PD, led police to the body, and made further incriminating statements at Albany PD.

moral appeals, such as questioning if Logan had a soul, and told Logan that Pertzborn could help by writing in his report that Logan was cooperative. The court took that to mean “[s]o I would be foolish not to keep talking at this point?” R.196:26; App.75.

The court considered that Pertzborn grabbed Logan’s hand, finding it “very unusual . . . this [is] an intimidation factor to say it’s almost a passive/aggressive I got control here . . . I’m in charge . . . [A] subtle, maybe not so subtle, way of exercising that authority and control there.” R.196:26-27; App.75-76. This was “a factor in the overall circumstances in terms of whether the defendant is in a physical, emotional state to be able to resist, as they say, these questions to exercise his own willpower.” R.196:27; App.76.

The court ruled that:

Because of the totality of the circumstances, the frequency of the interviews, the length of the interviews, the nature of the interview at the Brodhead station I think that I will find . . . that the nature of the questions were coercive, given we’ve changed from more conversational and investigation to making accusations and these appeals to I can help you. We can write up a report that shows you are cooperative. Let me hold your hand. Because of that I will direct that the statement made by the defendant at the Brodhead Police Department, at the crime scene, at the subsequent trip to the Albany Police Department will be suppressed.

R.196:28-29; App.77-78.

The court also found, “due to the circumstances, the successive interviews here, the late hour, the totality of the circumstances, the nature of the questions that those statements were involuntary.” R.196:35; App.84.

The court of appeals affirmed in-part and reversed in-part. *Kruckenberg*, 2024 WI App 45, ¶93; App.48. The court of appeals reversed the circuit court’s decision that any statements up until Pertzborn’s “proper burial” comment were involuntary. *Id.*, ¶¶81-83; App.42-43. The court of appeals also reversed the circuit court’s finding that the Brodhead interview was custodial up until the “proper burial” comment. *Id.*, ¶¶84-92; App.43-48.

The court of appeals affirmed the circuit court’s suppression of all statements after Pertzborn’s “proper burial” comment because “the numerous techniques used to attempt to elicit incriminating statements—in light of Kruckenberg’s age—were coercive when considered together,” *id.*, ¶63; App.33, and “Pertzborn’s interrogation techniques, when balanced with Kruckenberg’s personal characteristics, overcame Kruckenberg’s ability to resist pressures brought to bear on him in an unequal confrontation.” *Id.*, ¶77; App.40.

After finding that Logan’s statements following the proper burial comment were involuntary, the court declined to address whether Logan was in-custody for

*Miranda* purposes after Pertzborn’s “proper burial” comment. *Id.*, ¶84 n.13; App.44.<sup>11</sup>

The State petitions this Court to reweigh the totality of the circumstances and come to a different decision than the circuit court and court of appeals.

## ARGUMENT

### **I. The law is well-settled and the State is asking this Court to correct what it claims were erroneous decisions.**

There is no question what the law is or the legal principles that apply to determining whether statements are voluntary, and the State is simply asking this Court to issue a different decision. It is well-established that this Court is not an error-correcting court.<sup>12</sup> *State v. Wiskowski*, 2024 WI 23, ¶101, 412 Wis. 2d 185, 7 N.W.3d 474 (Ziegler, C.J., dissenting); *see also State v. Gajewski*, 2009 WI 22, ¶11, 316 Wis. 2d 1, 762 N.W.2d 104 (dismissing a petition for review as improvidently granted when the “review [was] more about error correction than law development”).

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<sup>11</sup> If this Court accepts review, Logan will both argue that his statements following the “proper burial” comment were involuntary and that he was in custody and the statements were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). *See* Wis. Stat. § 809.62(3m)(b)1.

<sup>12</sup> The term “error correcting” is used to reference what the State is seeking, not an acknowledgement that the court of appeals did, in fact, err.

The parties and courts have agreed on the law at every stage of the proceedings. *See* R.83:15; R.151:23-24; R.153:75-77; R.196:5-7; App.54-56; App. Br. at 33-36; Resp. Br. at 41-43; *Kruckenber*, 2024 WI App 45, ¶¶36-44; App.22-24; Pet. for Review at 17-19.

Yet, in asking this Court to review the confession, the State makes conclusory statements that the court of appeals' opinion "is in conflict with opinions of the United States Supreme Court, this Court, and other court of appeals' decisions." Pet. for Review at 7. The State does this by citing numerous cases for the proposition that a certain tactic was not deemed coercive in its own context, and arguing the same tactic can never be coercive. *See, e.g.* Pet. for Review at 19-23.

However, in order to make this point, the State ignores this Court's recent decision in *Vice*, where it noted the possibility that tactics, which might be permissible in isolation, could be coercive in the aggregate. *Vice*, 397 Wis. 2d 682, ¶48; *Kruckenber*, 2024 WI App 45, ¶41; App.23-24. In essence, the State takes issue with the outcome of the totality of the circumstances analysis.

Ironically, the State does what it often accuses the defense of—focusing on the legality of individual behaviors when the standard is totality of the circumstances. For example, in the Fourth Amendment context, it is well established that police can draw reasonable suspicion from purely



innocent behaviors, and “[a]ny one of these facts, standing alone, might well be insufficient. But that is not the test we apply. We look to the totality of the facts taken together. The building blocks of fact accumulate.” *State v. Waldner*, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996). The same is true when analyzing the coercive pressures used by police during interrogation.

The court of appeals explicitly addressed the tactic the State now employs in its petition for review and held “that the numerous techniques used to attempt to elicit incriminating statements—in light of Kruckenberg’s age—were coercive when considered together.” *Kruckenberg*, 2024 WI App 25, ¶63; App.33. The State’s response is to mischaracterize the facts<sup>13</sup> as found by the circuit court and demonstrated by the record, and claim this case is nothing more than “five minutes of [police] reasonably, calmly imploring a 16 year old [sic] who is telling an extremely unbelievable story to tell the truth.” Pet. for Review at 29.

## **II. The court of appeals’ opinion is not in conflict with other cases.**

The court of appeals’ opinion does not conflict with other cases and this Court should reject the State’s attempt to manufacture discord in the law. Many of the arguments the State makes can be dispensed with using the argument above—that the

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<sup>13</sup> The State’s factual mischaracterizations are discussed in-depth in Section III. *Infra* at 33-35.

totality of the circumstances test requires courts to consider all of the techniques used by police to determine whether or not police overbore an individual's will leading to an involuntary confession. *Vice*, 397 Wis. 2d 682, ¶48; *Kruckenberger*, 2024 WI App 45, ¶41; App.23-24.<sup>14</sup>

The State argues that the court of appeals relied on a series of out-of-state cases where the facts of parental involvement were more extreme than here, and it either should not have considered Delores' involvement or that it was not coercive.<sup>15</sup> Regardless, two things are true: first, the court of appeals specifically noted it was not considering Delores' actions, but Pertzborn's decision to side with her and leverage her against Logan. *Kruckenberger*, 2024 WI App 25, ¶55; App.29-30. Second, the court of appeals cited the out-of-state cases for a simple, singular

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<sup>14</sup> The State makes the argument that specific tactics were deemed not coercive in *Vice*; *State v. Deets*, 187 Wis. 2d 630, 636, 523 N.W.2d 180 (Ct. App. 1994); *Etherly v. Davis*, 619 F.3d 654, 663 (7th Cir. 2010); *Fare v. Michael C.*, 442 U.S. 707, 727 (1979); *United States v. Miller*, 984 F.2d 1028, 1031–32 (9th Cir. 1993); *State v. Owen*, 202 Wis. 2d 620, 642, 551 N.W.2d 50 (Ct. App. 1996); *Dassey v. Dittmann*, 877 F.3d 297, 304 (7th Cir. 2017). Pet. for Review at 20, 23. Because the analysis must consider the use of *all* of the techniques together under these specific circumstances, the State cannot rely on these decisions to argue the law needs clarification.

<sup>15</sup> The State's argument regarding these cases is not clear as it begins this section by saying "non-state actors such as juvenile's parents are not supposed to factor into the analysis" but then primarily argues that the cases are distinguishable. Pet. for Review at 24-26.

proposition—while the presence of a trusted adult may weigh in favor of voluntariness, there are times that will not be the case. *Id.*, ¶71; App.36-37. As such, whether the facts in those other cases were more egregious does not undermine the conclusion that adults may fail to act as a buffer between police and may be weaponized against juveniles being interrogated.

Beyond the State’s failure to analyze the totality of the circumstances and overstating the court of appeals’ reliance on out-of-state cases, the State cites two Wisconsin cases it claims the court of appeals’ opinion is in conflict with—*Moore*<sup>16</sup> and *Hauschultz*.<sup>17</sup>

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<sup>16</sup> *State v. Moore*, 2015 WI 54, 363 Wis. 2d 376, 864 N.W.2d 827.

<sup>17</sup> *State v. Hauschultz*, No. 2022AP161-CR (Ct. App. Mar. 13, 2024) (unpublished per curiam decision); App.160-89.

A. *State v. Moore.*

The State spends several pages lamenting that “the court of appeals didn’t explain why the outcome here is different from *Moore*.” Pet. for Review at 20-23. It faults the court of appeals for “not even attempt[ing] to reconcile its opinion with that of this Court in *Moore*.” *Id.* at 23. It notes how the court of appeals cited *Moore* only once in rejecting one of the State’s arguments. *Id.* Ironically, that is once more than the State cited *Moore* in either its brief-in-chief or its reply in the court of appeals. See App. Br. at 4-6; Reply Br. at 2-3.

Regardless of the State’s failure to argue the importance of this case below—given their supposed similarities—the facts are easily distinguishable from those presented here.

First, the State mischaracterizes the facts in *Moore*, by claiming there were two interviews lasting three hours or more. Pet. for Review at 20-21. The basic timeline in *Moore* is as follows:

12:49PM:	Moore is arrested.
2:49-4:02PM:	Moore is read <i>Miranda</i> and interrogated.
Break:	Moore is given sandwiches, chips, and water
4:30-6:00PM:	Moore is interrogated
Break	
8:28-8:39PM:	Moore is read <i>Miranda</i> and

asked if he would take police to the crime scene.

Break: Trip to the crime scene, Moore gives his version, return to station, Moore is given time to eat under police supervision

9:47-10:07PM: Moore is interrogated.

Break

10:20-11:44PM: Moore is interrogated.

*Moore*, 363 Wis. 2d 376, ¶¶12-43. Thus, Moore was never interrogated for more than 90 minutes without being given a break, and police ensured that he ate while in their custody.

Less concerning than misrepresenting the timeline, is the State's blinders to the difference between the cases. Logan's interactions with police began at 2:00AM on January 9<sup>th</sup> and the court of appeals held that police overbore his will at 1:02AM on January 10<sup>th</sup>. R.100; 190 | 1:02:34-1:02:42.

The police did not care whether or not Logan had eaten or slept—despite him saying he needed the latter. R.190 | 12:26:57-12:27:10; 115:15; App.100; *infra* at 35. The police also did not read Logan his *Miranda* rights as the police had in *Moore*. 363 Wis. 2d 376, ¶¶14, 25, 63.

The personal characteristics are also much different. Logan had “minimal prior experience with law enforcement.” *Kruckenber*, 2024 WI App 25, ¶67; App.34-35. On the other hand, Moore had been arrested previously for multiple offenses—including a

felony—and said he was on probation for one of the charges. “Although Moore was only 15 years old at the time of his questioning, he had more experience with police and law enforcement than most people his age.” *Moore*, 363 Wis. 2d 376, ¶¶59-60.

Moreover, what is missing from *Moore*—either the majority or the dissent—is any indication that police ever indicated that they were on Moore’s side or made emotional or moral appeals akin to Pertzborn’s comments about Logan having a soul and giving the child a proper burial. *Id.*, ¶¶55-65, 124; *Kruckenber*, 2024 WI App 25, ¶¶54-60; App.28-32; R.196:26; App.75.

Also missing from *Moore* is any indication that police employed any sort of “parental familiarity” as Pertzborn did. *Kruckenber*, 2024 WI App 25, ¶60; App.32; R.196:26-27; App.75-76. Moreover, police in *Moore* did not leverage an adult close to the juvenile to try and overcome his denials. *See, e.g. id.*, ¶55; App.29.

While there are some similarities between the interrogations here and in *Moore*, the State wholly fails to address that many of the tactics the court of appeals deemed coercive and led to Logan’s involuntary statements did not occur in *Moore*. As such, there is no conflict between the two cases, such that this Court needs to provide clarity.

B. *State v. Hauschultz*.

The State claims the court of appeals' opinion is also in conflict with *State v. Hauschultz*, which warrants review. Again, there is no conflict because—as will usually be the case—each case relies on its own specific facts to reach its conclusion.

As with this case and *Moore*, *Hauschultz* involved a series of interviews. The first occurred in an empty hospital room and lasted about eight minutes. *Hauschultz*, No. 2022AP161-CR, ¶¶6-7; App.163. The second interview occurred at a police station beginning at 6:00PM and lasted roughly two and one-half hours. *Id.*, ¶9; App.163-64. During the second interview Hauschultz noted he had just learned in school about constitutional rights. *Id.*, ¶10; App.164. There was a third interview conducted thereafter. *Id.*, ¶23; App.168-69.<sup>18</sup>

In analyzing voluntariness of the first interview, the court of appeals noted that Hauschultz's arguments related to the first interrogation were simply that he was separated from his parent—by their agreement—and the officer was armed. *Id.*, ¶¶54, 56; App.179-80. The court also noted that interrogation was found to be a “comfortable, calm, quick discussion” and police did not “repeatedly accuse

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<sup>18</sup> The statements in the third interrogation were not analyzed for voluntariness, as the court held the information was largely duplicative and would not have affected the defendant's decision to plea even if suppressed. *Id.*, ¶78; App.187.

Hauschultz of lying or otherwise attempt to wear down his defenses using psychologically coercive tactics.” *Id.*, ¶59; App.180-81.

The second interrogation was described as being in a “comfortable room with furniture” including a couch. *Id.*, ¶62; App.182. “[T]he conversation was congenial, calm and at times even lively as Hauschultz described his family, school, extracurricular activities and living arrangements.” *Id.*, ¶63; App.182. While long, “there were breaks in excess of ten minutes” and Hauschultz was offered and accepted coffee several times. *Id.*, ¶64; App.182.

According to the court of appeals opinion, Hauschultz’s only argument regarding voluntariness was that “the interview was the classic ‘incommunicado interrogation’ that the *Miranda* court described as ‘destructive of human dignity.’” *Id.*, ¶69 (citing *Miranda*, 384 U.S. at 457); App.183-84. According to the court of appeals, “Hauschultz appears to contend that the coercion required to establish involuntariness is created by the mere fact that an interview occurred at a police department.” *Id.*, ¶70 n.12; App.184.

Whatever the validity of the court of appeals’ characterization of Hauschultz’s arguments,<sup>19</sup> there is nothing in the opinion that conflicts with this case.

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<sup>19</sup> Notably, amici who participated directed most of their briefs toward the third interview, that the court did not analyze. *Id.*, ¶46 n.9; App.176. This suggests that the court’s characterization is likely not far off.



Simply put, the description of police conduct is almost non-existent in *Hauschultz*; here the court of appeals devoted ten paragraphs to discussing coercive tactics. *Kruckenber*, 2024 WI App 25, ¶¶53-62; App.28-33. No reasonable person would read the two opinions and be confused over what the law is or how to apply it.

None of the cases cited by the State are in tension with the court of appeals' opinion here. Without anything to clarify in the law, this Court should decline to review the matter further.

### **III. The State ignores the standard of review and mischaracterizes the facts.**

In its petition, the State repeatedly makes factual assertions contrary to the circuit court's findings and the record, while not acknowledging the deferential standard of review.

Were this Court to accept review, the standard for reviewing whether Logan's statements were voluntary would be one where the Court defers to the circuit court's findings, unless they were clearly erroneous. *State v. Agnello*, 2004 WI App 2, ¶8, 269 Wis. 2d 260, 674 N.W.2d 594. Despite this deferential standard, the State ignores and misrepresents the record.

As noted, the State characterizes this case as being about "five minutes of [police] reasonably, calmly imploring a 16 year old [sic] who is telling an extremely unbelievable story to tell the truth." Pet. for

Review at 28, 29. It also claims that “Pertzborn never even raised his voice.” *Id.* at 28.

To the contrary, the circuit court noted that “[a]t approximately 12:54 a.m. there is a period in the interview where Pertzborn becomes more confrontational with the defendant.” R.196:20; App.69. The court of appeals noted:

[a]t this point in the interview, Pertzborn’s tone became stern, his language became accusatory, and his demeanor became confrontational. Pertzborn leaned over the table towards Kruckenberg, emphatically gesturing to Kruckenberg with his hands and occasionally touching Kruckenberg’s hands . . . .

*Kruckenberg*, 2024 WI App 25, ¶19; App.12-13; *see also* R.190 | 12:55:20-12:57:35.

The State’s characterization of the interview as “reasonable and calm” is belied by the findings of the circuit court, the description from the court of appeals, and objective review of the interview itself. The circuit court stated the interrogation “maybe began a little more open and less confrontational,” R.196:26; App.75, but described Pertzborn becoming “more confrontational” with Logan. R.196:20; App.69. The State claiming “Pertzborn never even raised his voice” is flatly contrary to the video. R.190 | 12:55:27-12:56:17; 12:57:08-12:57:20.

The State also falsely claims that Logan “did not tell Agent Pertzborn that he was fatigued, hungry, or sick.” Pet. for Review at 28. When they were waiting

for Delores to arrive, Pertzborn comments “This is fucking taking forever. I need sleep.” Logan replies “Me too.” R.190:12:26:57-12:27:10; R.115:15; App.100.

What these misrepresentations demonstrate is a theme that permeates the Petition for Review—the State is unhappy with the lower courts’ factual findings and analysis. To that end, it is asking this Court to step in, disregard the circuit court’s findings, and reweigh the totality of the circumstances.

At base, this is a case where the circuit court and court of appeals each applied the law in nuanced and well-reasoned decisions. At each stage, the deciding court ruled both for and against each party. There is no dispute over the law—aside from the State refusing to consider the police tactics in the aggregate—and no reason for this Court to accept review. Moreover, the State’s dissatisfaction at both lower courts’ interpretation of the facts is not something this Court should entertain.

## CONCLUSION

For the reasons stated above, this Court should deny review of the court of appeals' decision in this case.

Dated this 25<sup>th</sup> day of September, 2024.

Respectfully submitted,

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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 6,298 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.

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 25<sup>th</sup> day of September, 2024.

Signed:

*Electronically signed by*

*Lucas Swank*

LUCAS SWANK

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