STATE OF WISCONSIN

IN SUPREME COURT

CASE NO. 2023AP000450-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MARQUS G. PHILLIPS,

Defendant-Appellant-Petitioner.

PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

ISSUE PRESENTED.....3

CRITERIA SUPPORTING REVIEW.....4

STATEMENT OF THE CASE AND FACTS.....6

ARGUMENT 18

This Court should accept review to clarify whether and how the unavailability of less drastic curative remedies factors into a court's mistrial analysis. 18

CONCLUSION..... 23

ISSUE PRESENTED

> As in *State v. Debrow*,[1] mistrial motions are generally raised and decided during trial. Inherently then, trial courts usually have less drastic options available when considering whether a particular trial error is so prejudicial to require a mistrial. But what happens when an error that occurred during trial is not discovered until after a jury has returned a guilty verdict and after the court has sentenced the defendant?
>
> This is what happened in Marqus G. Phillips' case. After sentencing, the circuit court alerted the parties to the fact that a key witness for the state had violated the court's witness sequestration order during trial. The issue presented to this Court is: whether the unavailability of less drastic curative remedies is a factor that must be considered when a court determines whether a trial error is sufficiently prejudicial to warrant a mistrial?

The circuit court denied Phillips' motion for a mistrial and the court of appeals affirmed, reasoning that the unavailability of less drastic remedies "does not alter the trial court's prejudice determination." *See State v. Phillips*, No. 2023AP450-CR, unpublished slip op. (WI App Oct. 4, 2023). (Pet. App. 3-15). This Court should grant review and reverse.

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[1] *State v. Debrow*, 2023 WI 54, 408 Wis. 2d 178, 992 N.W.2d 114.

CRITERIA SUPPORTING REVIEW

Defendants face a steep uphill climb in challenging a trial court's decision to deny a motion for a mistrial. First, whether to grant a mistrial is "committed to the sound discretion of the circuit court." *State v. Ford*, 2007 WI 138, ¶28, 306 Wis. 2d 1, 742 N.W.2d 61. Second, a mistrial is warranted only when, "in light of the whole proceeding," the error deprived the defendant of a fair trial. *State v. Ross*, 2003 WI App 27, ¶47, 260 Wis. 2d 291, 659 N.W.2d 122. Third, to avoid waiving the claim, the defendant must make a contemporaneous objection and move for a mistrial. *State v. Sigarroa*, 2004 WI App 16, ¶¶24-26, 269 Wis. 2d 234, 674 N.W.2d 894.

By making a timely objection and a motion for a mistrial, the defendant necessarily gives the circuit court an opportunity to determine whether a "less drastic alternative," such as striking testimony or offering a curative instruction or a specific jury instruction, is sufficient to address any potential prejudice to the defendant. *See id.*; *State v. Adams*, 221 Wis. 2d 1, 17, 584 N.W.2d 695 (Ct. App. 1998).

In *Debrow*, this Court was asked to decide whether the court of appeals applied the correct analysis when considering a trial error combined with (1) a request for a mistrial, (2) a proposed curative instruction, and (3) a standard jury instruction regarding stricken testimony. The *Debrow* majority held that the circuit court did not erroneously exercise

its discretion because a witness' CCAP reference was "not so prejudicial as to warrant a mistrial." 408 Wis. 2d 178, ¶16. The court, in addition to downplaying the substantive significance of the CCAP reference, highlighted the fact that the testimony was "mitigated when the circuit court immediately struck the testimony," and the court "considered various alternatives to what it correctly deemed the 'most serious of remedies,' a mistrial." *Id.*, ¶¶16-17.

The *Debrow* concurrence, while criticizing the majority for failing to conduct a "full analysis of the entire proceeding," "including the sufficiency of the jury instruction," agreed the case involved a timely objection and consideration of less drastic remedies. *See id.*, ¶¶21-23.

Phillips' case represents an exception to the general rule described above because the trial error did not come to light until after sentencing. As will be further detailed below, the undisputed error that occurred during Phillips' jury trial was the violation of the court's sequestration order by a primary witness for the state. Specifically, the circuit court determined that the second of two of the state's witnesses listened in on the trial from the hallway outside the courtroom prior to her testimony and until she was caught by the judge's judicial assistant. However, neither the court nor the parties discovered the violation until after the jury convicted Phillips and after the court had already placed him on probation with conditional jail time.

After the circuit court held an evidentiary hearing and determined that the witness violated the court's sequestration order, the court found a lack of prejudice and denied Phillips' motion for a new trial. Thereafter, the court of appeals affirmed, rejecting Phillips' arguments related to the unavailability of less drastic remedies. (Pet. App. 12).

Thus, Phillips' case offers this Court a chance to resolve the differing analyses offered by the *Debrow* majority and the concurrence. How does the fact that no lesser remedies are available impact the prejudice analysis with respect to an undisputed trial error and a defendant's motion for a mistrial?

For these reasons, review is warranted because a decision from this Court will help develop, clarify and harmonize the law, and the question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by this Court. *See* Wis. Stat. § (Rule) 809.62(1r)(c)2.

STATEMENT OF THE CASE AND FACTS

On October 14, 2021, the state charged Marqus G. Phillips with operating a motor vehicle while intoxicated, as a third offense. (3). Prior to trial, the court ordered "all witnesses to be excluded from the courtroom except when called to testify in this case, and order all witnesses to refrain from talking about this case to any other person but counsel for the State or for the defense during the pendency of this trial, except when testifying." (27:1; 44:2-3, 6, 8).

At trial, the state called two witnesses: City of Oshkosh Police Officers Jacob Schwartz and Sarah Pauer. (68:2, 62-101).

Officer Schwartz testified first. (68:62). At about 3:40 a.m. he was dispatched to "320 Prospect" regarding "somebody in the caller's vehicle." (68:63). Officer Schwartz arrived at the scene and activated his body camera before making contact with Phillips, who was asleep in the front seat of a silver SUV parked next to the residence. (68:67-69).

Officer Schwartz testified that during his "brief interaction" with Phillips, he believed Phillips was intoxicated. (68:71). Portions of Officer Schwartz's body camera video were played for the jury. (68: 67-81; (129). Officer Schwartz did not arrest Phillips, however, and Phillips "went on his way." (68:72).

Officer Schwartz later returned to the same address and found Phillips' wallet near the entrance to the residence. (68:72). Officer Schwartz noticed that Phillips' red vehicle, which had been parked close-by was no longer there. (68:67, 72). Officer Schwartz explained that he and Officer Pauer made arrangements to return Phillips' wallet to Phillips' wife at a nearby Kwik Trip. (68:73-74).

Officer Schwartz testified that he "observed the vehicle that had been previously parked on Prospect Avenue pulling into Kwik Trip just before I did." (68:75). The state asked Officer Schwartz, "And, did you keep eyes on the vehicle, between the time that it parked and the time that you walked up to it?"

(68:75). Officer Schwartz responded, "Yes," and that he did not see anyone "get in or out of the vehicle." (68:75). Officer Schwartz testified that upon approaching, Phillips was in one vehicle and his wife was in a vehicle to the left. (68:76-77). Officer Schwartz then arrested Phillips for OWI. (68:77).

After his arrest, Phillips was transported to the sheriff's office, during which time Officer Schwartz explained that Phillips was "just yelling at me throughout the entire transport." (68:78). According to Officer Schwartz, Phillips' position was that because he didn't see him driving, Officer Schwartz couldn't arrest him for OWI. (68:79).

On cross-examination, Officer Schwartz admitted that after his first interaction with Phillips, he told the officer that he wasn't going to drive and that he "left on foot." (68:83). Next, Officer Schwartz admitted the he never saw Phillips driving. (68:83). Instead, he clarified that he "observed the vehicle in motion" and that when he arrived, [Ms. Phillips] was already there. (68:83). As he approached on foot, Phillips' car was parked straight and turned off. (68:84).

Next, Officer Schwartz testified that Phillips repeatedly told him he wasn't driving and that "the driver was in Kwik Trip." (68:84). Officer Schwartz admitted that he "never looked into or investigated the driver that he referenced in the Kwik Trip." (68:84). Moreover, Officer Schwartz admitted that Kwik Trip has surveillance footage, but that he never requested

the footage. (68:84). Further, Officer Schwartz admitted that he observed no evidence of impaired driving, administered no field sobriety tests, and obtained no evidentiary breath or blood samples from Phillips. (68:85-87). On re-cross, Officer Schwartz stated that he was "less than a hundred feet" away from Phillips' vehicle when he observed the vehicle arrive at the Kwik Trip. (68:87).

Officer Pauer was the state's second and final witness. (68:88). Officer Pauer confirmed that she was also on duty on May 29, 2021, and she received a call for service at 320 Prospect. (68:88). As did Officer Schwartz, she wore a body camera that captured her interactions with Phillips. (68:89; 129). Officer Pauer stated that Phillips was "driving that red vehicle the next time [she saw] it." (68:90). Like Officer Schwartz, Officer Pauer opined that Phillips was intoxicated and not safe to drive during her initial encounter with him and that he walked away after the encounter. (68:93).

As did Officer Schwartz, Officer Pauer explained that she later arranged to return Phillips' wallet to Phillips' wife at Kwik Trip. (68:94). Asked if she observed "the defendant" pull into the Kwik Trip, Officer Pauer stated that she saw "the vehicle pull into the Kwik Trip, yes." (68:95). As it had with Officer Schwartz, the state asked Officer Pauer whether she had "eyes on the vehicle from the time that it stopped until you encountered it?" Officer Pauer said, "Yes," and agreed that no one

entered or exited the vehicle and that she eventually observed Phillips in the driver's seat. (68:95).

On cross-examination, Officer Pauer agreed that Phillips was not in "any trouble" when he left on foot after her initial encounter with him. (68:97). Like Officer Schwartz, Officer Pauer agreed that Phillips' car was parked and turned off when she approached the vehicle at Kwik Trip. (68:97-98). Officer Pauer agreed that Phillips was "pretty angry and said he wasn't driving." (68:98). Like Officer Schwartz, Officer Pauer admitted that she observed no indication of impaired driving from Phillips, and obtained no breath or blood results as evidence of impaired driving. (68:99-100).

After Officer Pauer was released as a witness, the state rested and Phillips moved the court for a directed verdict. (68:101). Phillips argued that neither officer identified him as the driver of the vehicle in which he was later observed at the Kwik Trip. (68:101-102). "Both of them said they didn't see who was driving the vehicle. They just saw the vehicle." (68:101). The court denied the motion, explaining that the evidence was "sufficient." (68:102). "The officers testify they saw the vehicle go into the Kwik Trip parking lot, that there was no one else in the vehicle but the defendant, that they kept eye contact. So, I think that's sufficient -- if you want to call it -- circumstantial evidence." (68:102).

Phillips thereafter exercised his right to not testify and the parties proceeded to closing arguments. (68:104-105, 116). The state argued that "two officers testifying, independently, that they each saw the defendant drive into the parking lot -- *well, they saw a car drive into the parking lot*." (68:117) (Emphasis added). Phillips argued that "there are many steps, again, that need to be taken to guide you from innocence to guilt. However, today you heard the officers started with that guilt They started with those assumptions and then tried to back their way up." (68:120). Phillips argued that both officers admitted that "they didn't see [Phillips] drive." (68:121).

On rebuttal, the state sought to double down: "Two officers absolutely saw him driving. Could they see him...from the driver's seat, from their perspective? No. And they said they couldn't. But they saw the car come into the parking lot, go across the parking lot, park. Nobody got out. They walked up. Defendant's in the driver's seat. He was driving." (68:127-128).

The jury found Phillips guilty as charged, and the court accepted the verdict and entered a judgment of guilt. (68:129-135).

The case proceeded immediately to sentencing, and the court withheld sentence and placed Phillips on probation for 12 months and ordered him to serve 45 days in jail as a condition of probation. (68:135-143).

Less than an hour after the court sentenced Phillips, the court recalled the case and the parties returned to the courtroom. (68:143; Pet. App. 17). The court explained:

> The judicial assistant came up to the Court in the last ten minutes or five minutes -- I don't know -- to indicate that, during the testimony of Officer Schwartz, she observed Officer Pauer leaning her head against the door, just outside the -- where the witness stand is and told her she couldn't listen to the testimony, for which she put her head down and walked away.
>
> But there's a concern to this Court. I am notifying all parties. I will, at this point, if necessary, be glad to suspend the sentence until anyone wants to look into this any further.
>
> So I'll give counsel a chance to digest all that and decide what it wishes to do. Do you want to have five/ten minutes and I'll come back in here? If you want to take some time to talk to your client and -- I don't know what to say. It happened. Everybody has a right to know it, and we'll see what you want to do.

(68:143-144; Pet. App. 17-18). After a brief recess, counsel for Phillips argued that "this could be a basis for a mistrial in this case." (68:145; Pet. App. 19). The state responded:

> I have some of this responsibility...
>
> …
>
> I spoke with the witnesses. I gave them the list of the Court's pretrial orders, which I now realize included sequestration…
>
> …
>
> And I should have said sequestration. And, frankly, I would hope that the training of officers means that that doesn't need to be said, but all of that said, before this trial began, I obviously made the mistake of not relaying that … order but, also put on the record, this is the chance for me to tell the officers anything that they didn't know so I don't think there really -- there has been a violation of this sequestration order because that order didn't get to this witness.

(68:145-147; Pet. App. 19-21). At this point, the court interrupted the state and sought to clarify whether the state was arguing that there was no violation of the court's sequestration order because the state failed to specifically relay that order to the witnesses. (68:147; Pet. App. 21). The state agreed that the court clearly ordered sequestration of witnesses, but argued that because the state never informed the witness of this order so that mistake is on me." (68:147-148; Pet. App. 21-22).

The state continued by arguing that "I gave the defense a chance to hear what I told the officers and a chance for them to say, hey, you forgot about the sequestration order, which I did." (68:148; Pet. App.

22). Stated bluntly, the state blamed the defense for its failure because "I was not told to make sure the sequestration order was communicated." (68:148; Pet. App. 22). The state next argued that "the idea of contamination of [Officer Pauer's] testimony being conforming to [Officer Schwartz's] testimony is so unlikely as to not be a basis for a mistrial." (68:149; Pet. App. 23).

Phillips thereafter reaffirmed his oral motion for a mistrial, and the court stayed the execution of Phillips' sentence in order to give the parties some time to research the issue and file any necessary briefs in advance of a likely evidentiary hearing. (68:149-150; Pet. App. 23-24).

The court held an evidentiary hearing on May 6, 2022. (82; Pet. App. 30). As at Phillips' trial, the state called Officers Schwartz and Pauer. (82:2). Officer Pauer agreed that the state failed to relay the court's sequestration order to her. (82:4). Asked what she heard while in the hallway during Officer Schwartz's testimony, Officer Pauer stated that she heard "all the body worn camera footage that was played," and "all of the prosecution's questions and all of the defense's questions." (82:5). Officer Pauer stated that she "could hear Officer Schwartz talking but couldn't hear the exact answers that he was saying." (82:5). Officer Pauer confirmed that at one point she leaned against the courtroom door. (82:5). Officer Pauer disclaimed that she did this in an effort to "specifically" hear what was going on in the courtroom. (82:6).

After Phillips' cross-examination of Officer Pauer, the court asked whether the officer thought she was outside the courtroom. In response, Officer Pauer stated that she knew she was not allowed inside the courtroom during trial, but that she "didn't think anything about listening outside because it was so loud." (82:16).

Next, the state called Officer Schwartz. (82:17). Officer Schwartz testified that before being called as a witness in Phillips' case, he sat outside the courtroom and he "could hear quite a bit of what was being said from the courtroom." (82:17).

Following the evidentiary portion of the hearing, the state argued that no violation of the court's sequestration order occurred, but that if a violation occurred, Phillips suffered no prejudice. (82:19-20). In response, Phillips argued that Officer Pauer clearly violated the court's sequestration order. (82:20). Moreover, Phillips argued that the theory of defense at trial was that the officers were not credible in their investigation and the assumptions they made about Phillips' guilt and that "[i]t was their word against my client's. So the fact that they would violate the sequestration order and listen in to each other's testimony is a clear violation, and it goes sincerely to the credibility and to the theory of defense." (82:20-21).

The court then made findings of fact and issued its decision. (82: 22-26; Pet. App. 31-35). After noting the purpose and practical logistics of standard witness sequestration, the court noted that "here it went

deeper because of the officer putting that ear against the door… So I'm not necessarily going to find this -- and I don't have to find it to be egregious or that it was intentional, but do I think there was a violation of the sequestration order? Yes. When someone, an officer, is out in the hallway with their ear against the door listening to another officer testify. So, was there a violation of the sequestration order? Yes, I think there was." (82:22-23; Pet. App. 31-32).

The court then turned to prejudice. (82:23; Pet. App. 32).

> I have gone back and looked at all of this. I have looked at the trial again, and I made notes right after the trial as well. There was overwhelming video evidence. And in terms of the officer's testimony, um, the only area where the Court could even think that there may be something where would it make sense that the officer -- that the officer violated the sequestration order to somehow hear the other officer's testimony to conform their testimony to some way bolster the case. That the only thing I can think would be possibly the issue of who was -- was the defendant the driver because that was certainly a significant issue in the case. And there was significant evidence that he was the driver, but the one issue was, well, both officers said as well nobody else got out of that vehicle and that was maybe the sealing factor on the case.
>
> So Officer Schwartz testifies he didn't see anybody else come out of the vehicle, Officer Pauer testified that she didn't. I looked at even the timing here of the testimony and the timing of the

> testimony was such that when Schwartz was testifying as to that fact, it was -- let's see here. He testified -- Schwartz testified to that long before cross-examination. Looking at my own notes as well. He testified to that before the cross-examination. Cross-examination occurred starting at 11:00. The tape starts after 11:00. So Schwartz's testimony is in before the cross. So I don't see how there could be any prejudice given the fact that that's the only issue that was even there. There was compelling testimony, and not really testimony, it was video evidence. Video evidence throughout for which I don't think I can find prejudice on this when the officer's testimony was in, other than the cross, prior to the other witness being out in the hallway.
>
> There have been other research on some of the cases on sequestration and this isn't the case in which there's been some type of -- and again, there have been other cases where there have been violations, cases in which just because there's a violation of sequestration orders in and of itself does not result in a finding of a mistrial. And again, the Court has to look at whether there is prejudice. And given the overwhelming video evidence, the Court's going to find that there has not been prejudice. And as such, the stay of the judgment will be lifted as to the jail credit -- I'm sorry, not jail credit, the jail sentence, and all other -- all other aspects of the judgment of conviction.

(82:23-25; Pet. App. 32-34). Thereafter, the court signed an order lifting the stay of Phillips' sentence. (75; Pet. App. 36).

The court of appeals affirmed. (Pet. App. 3-15). In response to Phillips' arguments that prejudice must be determined by considering the fact that no less drastic remedy was available, the court of appeals held that "[w]hile this may be true, it does not alter the trial court's prejudice determination, which this court has concluded was not erroneous." (Pet. App. 14).

This petition for review asks this Court to reverse the court of appeals decision below and to clarify that when considering a defendant's motion for a mistrial, whether other less drastic remedies are available, or unavailable, is a key component of a trial court's exercise of discretion and an appellate court's review.

ARGUMENT

This Court should accept review to clarify whether and how the unavailability of less drastic curative remedies factors into a court's mistrial analysis.

On the one hand, the law is clear that "[w]hen faced with a motion for a mistrial, the circuit court must decide, *in light of the entire facts and circumstances*, whether … the claimed error is sufficiently prejudicial to warrant a mistrial. *State v. Debrow*, 408 Wis. 2d 178, ¶15 (internal quotations omitted and emphasis added). Nevertheless, the *Debrow* majority and the concurrence parted ways with regard to how the consideration or availability of lesser remedies factors into a mistrial analysis.

The majority was clear: "The question of whether the court erroneously exercised its discretion in denying the mistrial is separate from the question of whether its instruction actually cured the error. Debrow challenges the court's decision to deny a mistrial. He did not alternatively challenge the adequacy of the court's curative instruction, so that issue is not before us today." *Debrow*, 408 Wis. 2d 178, ¶19.

The concurrence, on the other hand, explained that "more analysis is needed because whether the circuit court appropriately exercised its discretion when denying a motion for mistrial includes assessing whether the circuit court gave reasoned consideration to the possibility of a curative instruction relative to the claimed error. *Debrow*, 408 Wis. 2d 178, ¶52 (Roggensack, J., concurring). Further, even while agreeing with the majority that the CCAP comment was not sufficiently prejudicial to warrant a mistrial, the concurrence assessed whether a curative instruction was a possible or necessary remedy for the claimed error.

Within the common mistrial context, the concurrence's focus on the availability of lesser remedies is consistent with the established precedent: "When improper evidence comes before the jury, the circuit court decides whether a curative instruction is necessary as part of the exercise of its discretion in ruling on a mistrial motion." *Sigarroa*, 269 Wis. 2d 234, ¶¶24-26. This is so because the "law prefers less drastic alternatives [than mistrials] if available and

practical. *Debrow*, 408 Wis.2d 178, ¶45 (Roggensack, J., concurring).

Moreover, the concurrence recognized that "[d]eclaring a mistrial is proper only where the error is beyond repair and cannot be corrected by any curative relief." *Id.*, ¶50 (Roggensack J., concurring, internal quotations omitted). Implicit in the concurrence's analysis is a recognition that some errors may be prejudicial enough to require a curative remedy, but not so prejudicial to require the declaration of a mistrial.

In *Debrow*, though, the full court agreed that the CCAP comment at issue fell short of the high bar to warrant a mistrial because "[n]o reasonable jury could have fairly come to any other decision." *Id.*, ¶¶60, 63 (Roggensack J., concurring). The issue was also complicated by Debrow's position that no curative instruction could undo the harm done by the witness' CCAP comment.

In Phillips' case, it is undisputed than no curative remedy was available to Phillips, and that the only remedy available to Phillips was to have the court declare a mistrial and to retry the case. But how exactly is the circuit court, or a reviewing court, supposed to factor in the unavailability of curative remedies when deciding a motion for a mistrial?

In the court of appeals, Phillips' argued that prejudice had to be assessed after considering the "entire facts and circumstances" and "in light of the whole proceeding," which required the court to

consider whether a reasonable jury could have come to any other decision. *See id.*, ¶¶15, 53, 60 (Roggensack, J., concurring). To properly assess prejudice, in light of Officer Pauer's violation of the sequestration order, Phillips argued that the court must ask whether a reasonable jury could have come to another decision had they been informed of Officer Pauer's violation or instructed to disregard her testimony, or to only consider the testimony in light of the fact that she violated the court's sequestration order.

Phillips argued that a jury weighing the officers' credibility, along with all of the other evidence in the record, could have fairly come to the conclusion that reasonable doubt existed as to whether Phillips operated his vehicle prior to his encounter with police at Kwik Trip.

No video evidence confirmed the officers' assumption that Phillips operated his vehicle prior to their encounter with him at Kwik Trip. The state's case came to down to whether the jury believed Officers Schwartz and Pauer. The defense substantively faulted the state for failing to investigate Phillips' explanation that the driver of his vehicle was inside the Kwik Trip. Had the court informed the jury of Officer Pauer's violation, or instructed the jury to disregard her testimony or to consider the testimony in light of her violation of the court order, a reasonable jury could have returned a not guilty verdict.

The circuit court and the court of appeals, on the other hand, assessed prejudice by trying to determine whether Officer's Pauer's testimony was likely influenced by her violation of the sequestration order and whether the state's case as a whole was so overwhelming to result in no reasonable probability that the violation impacted the verdict. But, without considering how a reasonable jury informed of Officer Pauer's violation would have likely reacted, the lower courts failed to fully assess the inherent prejudice in Officer Pauer's violation. Reminiscent of the *Debrow* concurrence, this analysis is incomplete.

The law requires a decision on a mistrial motion to be made only after considering the availability of curative remedies and by deciding whether a curating remedy would have been required or sufficient to cure the error. In this case, Phillips, through no fault of his own, was denied a generally available and legally effective remedy: a curative instruction, which the law presumes juries follow. While Debrow was at least in a position to decline a curative instruction he viewed as insufficient, Phillips only available option was a mistrial.

Review of Phillips' case will allow the Court to consider two important issues: (1) the proper scope of analysis of a motion for a mistrial and (2) whether the unavailability of less drastic curative remedies is a factor that must be considered when determining whether a trial error is sufficiently prejudicial to warrant a mistrial.

CONCLUSION

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

Dated this 1st day of November, 2023.

Respectfully submitted,

Electronically signed by
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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in s. 809.19(8)(b), (bm) and 809.62(4). The length of this petition is 4,784 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this petition is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 1st day of November, 2023.

Signed:
Electronically signed by
Jeremy A. Newman
JEREMY A. NEWMAN
Assistant State Public Defender