STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2023AP715-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

J.D.B.,

Defendant-Appellant.

ON REVIEW FROM A COURT OF APPEALS DECISION REVERSING AN ORDER FOR INVOLUNTARY MEDICATION ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE MILTON L. CHILDS, SR., PRESIDING

REPLY BRIEF OF PLAINTIFF-RESPONDENT-PETITIONER

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In *Sell*, the U.S. Supreme Court set the constitutional balance to employ for involuntary medication to restore competency. Jared seeks to categorically skew that balance in defendants' favor in numerous ways, from cabining serious crimes, to excusing forfeiture, to expanding special circumstances, to inviting impeachment by appeal, and in endorsing heightened requirements for individualized treatment plans. His brief is notably longer on policy than it is on law; this Court should reverse.

I. This Court should adopt the standard of review endorsed by most federal circuits.

For *Sell* orders, this Court should adopt the standard of review employed by most federal circuits, which would treat *Sell* factors two through four as questions of fact reviewed for clear error. (State's Br.14.) Jared disagrees, asking this Court to treat those factors as questions of constitutional fact. (Jared's Br.19.)

Jared's comparison to questions of constitutional fact is inapt. In the Fourth Amendment context, for example, appellate courts defer to factual findings regarding the circumstances of a traffic stop and utilize them to decide whether a legal standard like reasonable suspicion is satisfied. Here, by contrast, the factual findings receiving deference—like whether involuntary medication is medically appropriate—directly establish the legal standard (medical appropriateness). Under Jared's approach, then, independent review offers no practical distinction from clear-error review because the appellate court must defer to the not-clearly-erroneous factual finding that establishes the standard. Viewed this way, there is no meaningful difference between the parties' positions and this Court should join the company of federal circuits applying *Sell*.

II. The State proved the *Sell* factors.

A. Important governmental interest

1. Serious crime

The parties agree that Jared faced prosecution for a serious crime. (Jared's Br.20 n.1.) But they dispute how to decide seriousness.[1] (Jared's Br.21–24, 27–30.)

The State's preferred method tracks most federal circuits. (State's Br.25–26.) It focuses on the maximum penalty but allows for secondary considerations like the nature or effect of the crime and the defendant's criminal history. (State's Br.25–26.)

Jared's preferred "categorical" approach finds no support in *Sell* or case law interpreting it. (Jared's Br.21–24.) It also inappropriately invites this Court to speak for the Legislature. He asks this Court to "adopt the crimes designated 'serious' by the Legislature as the measure for determining seriousness under *Sell*," suggesting that the Legislature has weighed in. (Jared's Br.23.) But it hasn't. None of the statutes that Jared relies on are the product of policy considerations regarding what crimes are serious enough for *Sell* purposes. (Jared's Br.23–24.) The Legislature's judgment on seriousness for things like childcare licensing isn't necessarily reflective of its position on seriousness under *Sell*. (Jared's Br.23 n.3.)

Jared's categorical approach is seriously flawed. Consider a woman who is repeatedly harassed, followed, and threatened by a stranger who saw her Instagram account. The

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[1] Jared's concession doesn't obviate the need for this Court to resolve this open question. (Jared's Br.20.) The proper method for deciding seriousness—in particular, whether courts can consider the nature or effect of the crime and the defendant's criminal history—directly informs the question whether special circumstances undermine the State's interest in prosecution.

stranger shows up where she works and lives. He threatens to kidnap and kill her. This causes her severe emotional distress, and she loses her job. Having a prior conviction for a violent crime, the man is charged with stalking under Wis. Stat. § 940.32(2m), a Class H felony carrying a maximum penalty of six years' imprisonment, Wis. Stat. § 939.50(3)(h).

Any reasonable person would consider the alleged crime serious, but it wouldn't be under Jared's categorical approach. None of the statutes he relies on list stalking as a serious crime. (Jared's Br.23–24.)

Or imagine a woman allegedly steals over $100,000 from her employer. That's a Class F felony with a maximum penalty of 12.5 years' imprisonment. Wis. Stat. §§ 943.20(3)(cm), 939.50(3)(f). This also wouldn't constitute a serious crime under Jared's categorical approach, despite *Sell*'s instruction that property crimes can be sufficiently serious. *Sell v. United States*, 539 U.S. 166, 180 (2003).

Terrorist threats provide another example. A person accused of making terrorist threats contributing to death faces a Class G felony carrying a maximum penalty of 10 years' imprisonment. Wis. Stat. §§ 939.50(3)(g), 947.019(2). As Jared sees it, this isn't serious.

Enhancers also pose a problem. A person could be charged with mutilating a corpse which is a Class F felony carrying a maximum penalty of 12.5 years' imprisonment. Wis. Stat. §§ 939.50(3)(f), 940.11(1). If the person is a repeater under Wis. Stat. § 939.62(1)(c), the maximum term of imprisonment could be increased by six years. Thus, allegations carrying a maximum 18.5 years' imprisonment wouldn't be serious under Jared's categorical approach, as mutilating a corpse isn't listed in any of Jared's preferred statutes.

These examples aren't meant to be exhaustive (Jared's Br.24); the State hasn't endeavored to scan the entire criminal code to make its point.

Jared's categorical approach wouldn't just limit the number of crimes that may be considered serious under *Sell*. He further seeks to tilt the balance in defendants' favor by contending that "case-specific information" is "only relevant if" it "lessen[s] the State's interest in prosecution." (Jared's Br.21–25.) *Sell* doesn't say that, as evidenced by most federal circuits factoring case-specific information into the seriousness equation. (State's Br.16–17, 26.)

Beyond that, the flaws with Jared's position on secondary considerations are apparent. Not considering case-specific information would mean that in the above stalking hypothetical, the substance of the alleged conduct would be irrelevant in evaluating the government's interest in prosecution. But surely the substance of the allegations makes the crime more serious. *See United States v. Onuoha*, 820 F.3d 1049, 1055 (9th Cir.2016) (telephonic threat made more serious by allegations of calling "LAX officials on the eve of the anniversary of the September 11th attacks, urging evacuation of the airport"). Further, under Jared's approach, a defendant's lack of criminal history would lessen the government's need for prosecution, but an aggravated history wouldn't strengthen that need. Thus, in the enhancer hypothetical noted above, it wouldn't matter that the defendant accused of mutilating a corpse was convicted of a felony in the five-year period preceding the allegation. Why? *See United States v. Valenzuela-Puentes*, 479 F.3d 1220, 1226 (10th Cir.2007) (recidivism "increases the government's interest in prosecuti[on]").

Jared claims "practical difficulties and potential unfairness" with an approach that factors case-specific information in assessing seriousness. (Jared's Br.22.) On the latter, the State hasn't argued that "the likelihood of

conviction" should be a secondary consideration for courts to consider. (Jared's Br.22–23; State's Br.26.) Thus, whether defense counsel is likely "to have received discovery or done any investigation" by the *Sell* hearing is irrelevant. (Jared's Br.22.) Regarding practical difficulties, Jared questions what courts may rely on in evaluating the nature or effect of the underlying conduct. (Jared's Br.22.) Courts logically turn to the complaint in assessing these secondary considerations. *See, e.g.*, *United States v. Boima*, 114 F.4th 69, 72, 77 (2d Cir.2024). And if criminal history isn't apparent from the complaint, courts can take judicial notice of CCAP records. *See Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis.2d 635, 829 N.W.2d 522. This exercise hardly calls for "sentencing-like pronouncements" at *Sell* hearings; Jared offers no *Sell* case law sharing his practical concerns. (Jared's Br.22–24.)

Finally, continuing the theme of skewing the *Sell* balance in defendants' favor, Jared argues that courts shouldn't aggregate crimes in evaluating the government's interest in prosecution. (Jared's Br.27–30.) He again improperly suggests that the Legislature has spoken on this issue. (Jared's Br.27.) The length of a competency commitment doesn't answer the question of what circumstances a court may consider in evaluating the first *Sell* factor. Moreover, it's Jared's approach that realistically will produce "untenable results." (Jared's Br.27.) Say a defendant is charged with four acts of domestic violence against four different victims in one complaint. Only one charge would count in assessing the government's interest in prosecution, despite the defendant's total exposure in a case with numerous victims.

Jared's contention that aggregation will "incentivize[ ] overcharging" is alarmist. (Jared's Br.28–30.) Even granting him the generous assumption that prosecutors will nefariously overcharge defendants with hopes of prevailing at

Sell hearings, courts may exercise sound judgment in assessing the severity of those charges. Aggregation isn't about "transform[ing] non-serious crimes into serious ones." (Jared's Br.30.) It's just reflective of what reasonably should be indisputable: a government's interest in prosecution may be affected by the number of crimes and victims involved.

The State's proposed method for deciding seriousness is logical and finds support in *Sell* case law; Jared's approach doesn't and would produce absurd results.

2. Special circumstances

At least five federal circuits place the burden on defendants to show special circumstances lessening the government's interest in prosecution. (State's Br.18.) Jared argues this is unfair, and courts should do their own investigation into mitigating circumstances. (Jared's Br.25–27.)

Jared's position in this litigation disproves his argument. If a defendant's incompetency prevents defense counsel from adequately raising special circumstances at the circuit court, it's unclear how counsel can later raise them on appeal, which happened here. (Jared's Br.25–26; State's Br.12–13.) And if "all of the information the Court of Appeals relied on was also available to the circuit court," it was available to defense counsel, too.[2] (Jared's Br.26.) Jared doesn't persuasively explain why it's "unreasonable" to require counsel to review the complaint and competency reports for mitigating circumstances (including treatment history), consider the Chapter 51 commitment standard,

[2] Jared's assertion is inaccurate. He doesn't dispute that in crediting the potential for civil commitment as a special circumstance, the court of appeals wrongly considered his "ongoing Chapter 51 proceedings." (State's Br.29; Jared's Br.30–33.) Those proceedings weren't ongoing when the circuit court addressed the *Sell* factors.

evaluate pretrial confinement, and make arguments for the defendant. (Jared's Br.25–27.)

Finally, the argument that *Sell* requires circuit courts to conduct their own investigation into special circumstances rightly has been rejected. *See United States v. Fieste*, 84 F.4th 713, 722 (7th Cir.2023). Jared's position that he has no obligation to raise an issue he's "best incentiv[ized] and "best position[ed]" to address is another example of him trying to tip the *Sell* balance in defendants' favor. *Id.* at 721.

a. Potential for lengthy civil commitment

The court of appeals erred in concluding that at the time of the *Sell* hearing, the potential for a lengthy civil commitment *in lieu of* a prosecution was more than speculative. (State's Br.28–32.) Jared doesn't really defend this aspect of the court of appeals' decision or respond to the State's claims of error. (State's Br.28–32; Jared's Br.30–33.) He instead appears to argue a new special circumstance: his "mental health precipitated his charge." (Jared's Br.30.) He suggests there's little need to prosecute individuals who commit crimes while living with mental health challenges. (Jared's Br.30–33.)

Jared's position conflicts with *Sell*. *Sell* states that civil commitment isn't a "substitute for a criminal trial," as the "[g]overnment has a substantial interest in timely prosecution." *Sell*, 539 U.S. at 180. It's often the case that defendants facing *Sell* hearings have mental health challenges that contributed to their alleged crimes; the defendant in *Sell* had "a long and unfortunate history of mental illness." *Id.* at 169. But that fact alone wasn't identified as a special circumstance. *See id.* at 180. Instead, the *Sell* Court identified circumstances that "reduce[ ] the likelihood of the defendant's committing future crimes" in the absence of a prosecution, like the possibility of "lengthy [civil]

confinement." *Id.* at 186. Jared's failure to argue that there was a more-than-speculative potential for lengthy civil confinement is therefore noteworthy. (Jared's Br.30–33.)

Jared does, however, defend the court of appeals' decision that the potential for an NGI commitment lessened the State's interest in prosecution. (Jared's Br.36–38.) He seems to acknowledge that equating NGI commitments with Chapter 51 commitments doesn't make sense in this context. "[P]edantic" or not, the State must restore the defendant's competency and "tak[e] the case to trial" to obtain an NGI adjudication and resulting commitment. *United States v. Mikulich*, 732 F.3d 692, 701 (6th Cir.2013); (Jared's Br.37.) Therefore, unlike with a Chapter 51 commitment, the potential for an NGI commitment doesn't "reduce[ ] the likelihood of the defendant's committing future crimes" *absent* a prosecution. *Sell*, 539 U.S. at 186.

Jared argues that the potential for an NGI commitment lessens the government's interest in a different way: neither conviction nor punishment follow an NGI adjudication. (Jared's Br.36.) He disregards that a commitment follows an NGI adjudication, which protects the public. Further—NGI trial or not—the State has a strong interest in helping victims seek timely justice. *See* Wis. Const. art. I, § 9m(2)(d). Jared's position is insensitive to crime victims. At least where the potential for a Chapter 51 commitment is the reason why no involuntary medication order is entered, victims can be assured that there's some measure of public protection while the prosecution sits dormant. That won't be the case if the potential for an NGI commitment is the reason why no involuntary medication order is entered.

Even if the potential for an NGI commitment is relevant, Jared offers nothing more than speculation that he'd have "a strong NGI claim." (Jared's Br.38.) He doesn't even discuss the standard he'd need to meet to prevail on the affirmative defense. (Jared's Br.38.) This is reminiscent of the

court of appeals' summary approach toward analyzing special circumstances. (State's Br.29.)

b. Significant pretrial confinement

Jared doesn't dispute the erroneous calculation of his pretrial confinement in analyzing this special circumstance—it was eight months, not ten. (State's Br.32; Jared's Br.31–33.)

He disagrees with the State on how to determine whether this time was significant within the meaning of *Sell*. (Jared's Br.31–32.) He asks that courts predict sentences at *Sell* hearings for comparison to pretrial confinement. (Jared's Br.31–32.) The impropriety of this approach is well-documented in *Sell* case law.[3] (State's Br.25, 32–33.)

Jared discounts what federal circuits rightly have observed in analyzing this special circumstance: the government's interest in prosecution goes beyond incarceration. (State's Br.33; Jared's Br.37 n.22.) He suggests that because collateral consequences are "available through" civil commitments, prosecutions aren't important. (Jared's Br.37 n.22.) Again, civil commitment isn't a substitute for a criminal prosecution. *Sell*, 539 U.S. at 180. Beyond ignoring the State's duty to seek timely justice for victims, Jared's position wrongly assumes that the prosecution is in the driver's seat for civil commitment proceedings. Ultimately, those are the counties' prerogative.

[3] Predicting sentences without the benefit of a PSI and the victim's input, and without knowing whether the defendant has accepted responsibility for his actions, isn't the same exercise as reviewing complaints and considering criminal history in assessing whether an alleged crime is serious. (Jared's Br.31–32.)

Comparing the correct pretrial confinement to the maximum[4] possible penalty, and considering important collateral consequences (like a firearms prohibition) given the alleged conduct at issue, Jared's pretrial confinement didn't lessen the State's interest in prosecution.

c. Bail

There was no need for the court of appeals to decide whether the bail statute was violated because the denial of bail is already accounted for under *Sell*. (State's Br.34.) Aside from its relationship to pretrial confinement, Jared argues that the wrongful denial of bail lessens the State's interest in prosecution by "hamper[ing] preparation of the defense." (Jared's Br.39.)

This is confusing for two reasons. First, the State indeed has an important interest "in assuring that the defendant's trial is a fair one," which is the point of seeking an involuntary medication order. (Jared's Br.39.) Therefore, that interest shouldn't be used *against* the State to *deny* a medication order. Second, Jared doesn't explain how the wrongful denial of bail in this context hampers the defense when he contends that incompetent defendants cannot even assist counsel with arguing special circumstances at a *Sell* hearing. (Jared's Br.25–26, 39–40.) "*Sell* doesn't direct courts to search for perceived wrongs and declare them 'special circumstances' that may defeat a request for involuntary

[4] Jared argues that extended supervision should be irrelevant when considering the maximum penalty. (Jared's Br.32.) His comparison to the federal system is inapt. Unlike the federal system, Wisconsin's bifurcated sentencing structure factors extended supervision into the maximum possible penalty.

medication." (State's Br.37.) That's what Jared's asking for here.[5]

On the merits, Jared defends the court of appeals' statutory interpretation analysis. (Jared's Br.41–42.) The State stands by its opposing reading of the relevant statutes. (State's Br.34–36.) The bail statute doesn't say that courts have the authority to order bail until a defendant is committed pursuant to Wis. Stat. § 971.14(5)(a)1. (Jared's Br.42.) Jared impermissibly inserts language into the statute. The bail statute doesn't need to communicate what section 971.14(5)(a)1. already makes clear: courts lose the ability to order bail once a commitment starts because the criminal proceedings are suspended, and the defendant is in DHS's custody. (State's Br.36.) There would be no reason for a committing court to consult the bail statute in the first place.

The actual language of the bail statute references section 971.14(1r), so it's surprising that Jared believes the meat of (1r) isn't "relevant." (Jared's Br.41.) Read in context, a court considering ordering bail for a defendant whose competency is questioned is instructed to consult section 971.14(1r), which says to find probable cause (if necessary) and then order a competency examination. Wis. Stat. §§ 969.01(1), 971.14(1r). There's no direction to order bail in section 971.14(1r).

Jared questions why the Legislature "would desire such an outcome" when defendants who've been released on bail *before* their competency is questioned stay released unless DHS justifies an inpatient examination. (Jared's Br.42.) One

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[5] Jared also argues that wrongfully denying bail "significantly hinders [defendants'] ability to receive outpatient competency restoration" services. (Jared's Br.40.) His reliance on "slides" from "a recent training hosted by the State Public Defender" just goes to show how far afield we are from anything that was presented to the circuit court. (Jared's Br.40.) Regardless, defendants awaiting inpatient placement may receive treatment in the jail, as Jared did here.

thought is that maintaining the status quo helps facilitate the examination process, which should move quickly. *See* Wis. Stat. § 971.14(2)(c). It's less likely a defendant will "fail[ ] to cooperate in the examination" if he's already in custody. Wis. Stat. § 971.14(2)(b). At the same time, for those who have succeeded on bail, there's no reason to believe they won't timely cooperate with the exam, so why spend time and resources to facilitate an involuntary inpatient examination?

The State's plain reading of the relevant statutes isn't unreasonable, and regardless, a violation of the bail statute isn't an additional circumstance (separate from pretrial confinement) that counts against the State in the *Sell* analysis.

d. Delay in transfer for inpatient treatment

The court of appeals didn't explain "why an unreasonable delay in transfer for inpatient [competency] treatment lessens the State's interest in prosecution." (State's Br.37.) Jared confirms the State's hunch: the suggestion is that by not getting Jared to an inpatient facility sooner, the State didn't consider this prosecution important. (Jared's Br.34.) Like the court of appeals, he identifies no *Sell* case law endorsing this approach. (Jared's Br.33–36.)

It's difficult to conceptualize how a commitment aimed at competency restoration can be used against the State in seeking an involuntary medication order. The commitment's very existence—capped at one year and requiring continuous progress reports, Wis. Stat. § 971.14(5)(a)1., (b)—shows the State's interest in prosecution. Jared also ignores that the relevant constitutional standard is reasonableness, not immediacy. (State's Br.38.) Tying a delay in transfer (perhaps due to space issues) to indifference about the prosecution the treatment is designed to facilitate amounts to flawed logic considering the reasonableness standard.

Even if a delay in transfer is relevant, there wasn't an adequate record to assess a due process violation. Jared's disagreement ignores the elephant in the room: we don't even know *why* there was a delay in transfer. (Jared's Br.35–36.) This matters in assessing the reasonableness of his detention. His invitation to declare a due process violation based on the isolated fact that his treatment at the jail wasn't productive is remarkable.[6] (Jared's Br.35.) Under that logic, even inpatient committees who are reexamined and found not competent but likely regain competency within the time remaining will have due process claims.

Legally, on this issue, Jared offers little. (Jared's Br.34.) He doesn't defend *Mink*'s strained reading of *Jackson*, on which the court of appeals relied. (State's Br.38–39; Jared's Br.34.) He notes *Jackson*'s instruction that a commitment "must be justified by progress toward" competency restoration. (Jared's Br.34.) The State has never claimed an ability to "hold someone in-custody and not treat them until it [sees] fit up to the 12 months set forth by statute." (Jared's Br.34.) It simply notes that "*Jackson* requires only a reasonable relationship between the length of detention and [the] state's goals," and it "discourages courts from interceding to impose arbitrary limits." *Glendening as Next Friend of G.W. v. Howard*, 707 F.Supp.3d 1089, 1110 (D.Kan.2023). Theoretically, it isn't unreasonable to provide treatment in the jail while others ahead in line receive adequate inpatient treatment. *See id.* at 1109–10. And Jared's undefined "progress" standard will invite courts to impose arbitrary time limits—what counts as "progress" at the start of a competency commitment, particularly if the committee is

[6] Jared's additional focus on his treatment at Mendota is irrelevant. (Jared's Br.35–36.) The due process violation at issue relates to the delay in transferring him to Mendota.

non-compliant with medication, as Jared was here? (Jared's Br.34.)

There was no reason to reach out and declare a due process violation here. It isn't relevant to *Sell*. Even if it is, there's an incomplete record to decide the issue. On what little the record reveals, Jared's detention was reasonable.

B. Significant furthering of the interest, necessity, and medical appropriateness.

The circuit court didn't clearly err in finding the remaining *Sell* factors satisfied. (State's Br.40–46.) Jared develops no argument that it did based on the actual evidence presented at the *Sell* hearing. (Jared's Br.43–52.) He instead endorses the court of appeals' impeachment-by-appeal tactic, relying on information that wasn't presented to the circuit court to discredit Dr. Illichmann's unrefuted testimony. (Jared's Br.47–49.)

Requiring defense counsel to try and undermine the State's case for involuntary medication through cross-examination isn't "shift[ing]" the *Sell* burden onto defense counsel. (Jared's Br.50 n.34.) It's just how the adversarial system works. The party with the burden of proof puts on its evidence (here, Dr. Illichmann's testimony and report) and the other party tries to undermine that evidence.[7] If the party with the burden presents credible, unrefuted testimony that satisfies the legal standard, the other party won't be successful. An appellate court shouldn't then come in, search for evidence that wasn't presented at the hearing, use that evidence to discredit the expert (on things like familiarity with the defendant's health history), and reverse the circuit

[7] Jared doesn't explain why it's unreasonable to require defense counsel to review drug labels and competency reports within 10 to 20 days of the hearing. (Jared's Br.50 n.34.)

circuit's discretionary decision. That's what happened here. (State's Br.40–43.)

More broadly, it's notable that while Jared submits the State's case is like that in *Green*, he doesn't discuss the facts of *Green* and attempt to draw parallels to this case. (Jared's Br.43–52.) He simply repeats that plans can't be generic without any meaningful discussion of what *Green* meant by that. It's clear what bothered the court of appeals in *Green*. (State's Br.22.) And it's equally clear that *Green* has been used as a springboard to nitpick treatment plans and second-guess doctors in ways that *Sell* doesn't require. Amici agree with the State's view of the legal landscape. (DHS Nonparty Br.; WPA Nonparty Br.)

Highlighting the hypertechnical arguments in *D.E.C.* isn't a "strawman" when Jared convinced the court of appeals of similar arguments here. (Jared's Br.51.) He likewise seeks requirements that aren't rooted in *Sell* or case law interpreting it and are inconsistent with the practice of medicine. (Jared's Br.43–46; State's Br.23.) He offers no case requiring individualized "dose" or "dosage"[8] ranges, or an individualized order of medications. (Jared's Br.43–52.) Such limitations can be dangerous to patients and interfere with their preferences for treatment. (DHS Nonparty Br.10; WPA Nonparty Br.9–13.)

Jared questions "what appropriate treatment plans look like" to the State. (Jared's Br.50.) As argued, the Sixth Circuit summarized it best. (State's Br.46.) Doctors need to demonstrate familiarity with the proposed medications *and*

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[8] Jared makes much about the difference between "dose" and "dosage," yet *Chavez* itself treats the terms interchangeably. (Jared's Br.44); *United States v. Chavez*, 734 F.3d 1247, 1253 (10th Cir.2013). Further, he doesn't dispute that Dr. Illichmann's testimony shows that he wasn't seeking unfettered discretion to treat Jared. (State's Br.44; Jared's Br.43–44.)

the patient in opining on the *Sell* factors. The State doesn't necessarily take issue with *Green*'s "minimum" requirements—they serve to prevent *Green*-like situations from happening in the future. (State's Br.22–23.) But when those requirements are taken to the extreme to challenge situations that aren't remotely like *Green*, it can result in case law that more closely resembles judicial policymaking than compliance with *Sell*.

CONCLUSION

This Court should reverse the court of appeals.[9]

Dated this 16th day of July 2025.

Respectfully submitted,

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[9] For the reasons argued in its opening brief, the State proved Jared incompetent to refuse treatment. (State's Br.46–48.) Jared hasn't responded to the State's arguments. (Jared's Br.53–55.)

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,200 words.

Dated this 16th day of July 2025.

Electronically signed by:

Kara L. Janson
KARA L. JANSON

CERTIFICATE OF EFILE/SERVICE

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

Dated this 16th day of July 2025.

Electronically signed by:

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