STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT III

Case No. 2024AP2291-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

BRIAN TYRONE RICKETTS, JR.,

Defendant-Respondent.

APPEAL OF AN ORDER STRIKING THE DOMESTIC ABUSE REPEATER PENALTY ENHANCEMENT, ENTERED IN BROWN COUNTY CIRCUIT COURT, THE HONORABLE JOHN P. ZAKOWSKI, PRESIDING

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT

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STATEMENT OF THE ISSUE

A defendant is subject to a domestic abuse repeater penalty enhancement when the defendant "was convicted on 2 or more separate occasions" of past domestic abuse crimes. Precedent interpreting the nearby and closely related habitual criminality statute explains each conviction is a separate occasion, even those from the same incident. Brian Ricketts has two separate domestic abuse convictions from the same incident. Does he qualify for the domestic abuse repeater penalty enhancement?

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests publication and does not request oral argument. Publication is appropriate under Wis. Stat. § (Rule) 809.23(1)(a)1., 3., and 5.[1] to enunciate what prior convictions may be relied upon for the domestic abuse repeater penalty enhancement in Wis. Stat. § 939.621(1)(b), thereby deciding a substantial matter of continuing public interest. Oral argument is unnecessary under Wis. Stat. § (Rule) 809.22(2)(b) because the briefs should fully present and develop the legal theories.

STATEMENT OF THE CASE

Nature of the Case. The State appeals from a circuit court order granting Ricketts' motion to strike the domestic abuse repeater penalty enhancement. (R. 29.) The State had included the penalty enhancement in the information and complaint. (R. 2; 9.) The State petitioned for leave to appeal from the circuit court order that struck the enhancement. (R. 29.) This Court granted the petition. (R. 31.)

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[1] All references to the Wisconsin Statutes are to the latest version unless otherwise indicated.

Crimes in the Complaint. The State charged Ricketts with battery and disorderly conduct for conduct he committed in April 2024. (R. 2; 9.) The victim was Ricketts' ex-girlfriend with whom he had children. (R. 2:3–4.) The complaint explained that Ricketts had "'punched' [the victim] approximately two to three times in the face and kicked [her] in the back about three or four times." (R. 2:4.) The complaint further explained that Ricketts had caused a disorderly disturbance, having called the victim a "bitch" and had refused to leave when asked by her. (R. 2:4.) The State identified each crime as an act of domestic abuse. (R. 2; 9 (citing Wis. Stat. § 973.055(1)).)

Penalty Enhancement. The State included penalty enhancements in the complaint and information. (R. 2; 9.) Relevant to this appeal, the State included the domestic abuse repeater penalty enhancement, relying upon two separate misdemeanor convictions. (R. 2:4.) Ricketts had been convicted of battery and disorderly conduct, as domestic abuse misdemeanors. (R. 2:4.) Ricketts had committed these misdemeanors on the same day in September 2021 and was convicted in May 2022. (R. 16:2, 5.) Based upon those two separate convictions, the State charged Ricketts as a domestic abuse repeater under the penalty enhancement in Wis. Stat. § 939.621. (R. 2.)

Motion and Order. Ricketts moved to strike the domestic abuse repeater penalty enhancement. (R. 15.) He acknowledged having the two separate convictions, but argued the crimes were "one single occasion." (R. 15:8.) He conceded that it was the quantity of crimes rather than the time of conviction that triggered a habitual criminality penalty enhancement in Wis. Stat. § 939.62. (R. 15:4–5 (citing *State v. Hopkins*, 168 Wis. 2d 802, 484 N.W.2d 549 (1992), *State v. Wittrock*, 119 Wis. 2d 664, 350 N.W.2d 647 (1984).) He argued that "*Wittrock* and *Hopkins* do not apply" to the domestic abuse repeater penalty enhancement. (R. 15:5.)

Ricketts relied instead upon a case interpreting a sex offender registration statute in Wis. Stat. § 301.45(5)(b)1. (R. 15:4–8 (citing *State v. Rector*, 2023 WI 41, 407 Wis. 2d 321, 990 N.W.2d 213).) Ricketts alleged the domestic abuse repeater penalty enhancement didn't apply because his prior crimes were a single course of conduct. (R. 15:6–8.)

The State argued the circuit court should deny Ricketts' motion. (R. 19.) It explained that the domestic abuse repeater and habitual criminality penalty enhancements were very similar in intent and purpose. (R. 19:3.) The State argued that these two penalty enhancement statutes should be interpreted the same. (R. 19:3.) The State relied upon *Hopkins'* interpretation that it was the quantity of crimes that was the critical factor for the penalty enhancement—neither the time of commission nor time of conviction was important. (R. 19:2 (citing *Hopkins*, 168 Wis. 2d at 810).) The State distinguished *Rector* because it interpreted a sex offender registration statute in Wis. Stat. ch. 301 that was not closely related to the penalty enhancement statutes in Wis. Stat. ch. 939. (R. 19:2–3 (citing *Rector*, 407 Wis. 2d 321).)

The circuit court granted Ricketts' motion. (R. 23.) Despite granting the motion, the court acknowledged the habitual criminality and domestic abuse repeater penalty enhancements are in the same chapter and found "the language to be similar between the statutes." (R. 23:7.) The court found that these penalty enhancement statutes were "more closely related than the sex registry statute." (R. 23:7.) Even with such an acknowledgement and finding, the court relied in part on the analysis in *Rector*. (R. 23:7.) It believed the difference in penalty among the enhancement statutes was sufficient to distinguish them. (R. 23:7–8.). The court struck the domestic abuse repeater penalty enhancement. (R. 23.)

Petition and Appeal. The State petitioned for leave to appeal. (R. 29.) This Court granted the petition and ordered that the appeal be decided by a three-judge panel. (R. 31; 33.)

STANDARD OF REVIEW

This Court's review of a question of statutory interpretation is de novo without deference to the circuit court's reasoning. *Rector*, 407 Wis. 2d 321, ¶ 8; *Hopkins*, 168 Wis. 2d at 807; *Wittrock*, 119 Wis. 2d at 669.

ARGUMENT

This Court should reverse because Ricketts has two separate prior domestic abuse convictions so the circuit court erred in striking the domestic abuse repeater penalty enhancement.

A. The plain-meaning rule and statutory construction canons provide a methodology for determining what a statute means.

1. The plain-meaning rule uses primarily intrinsic sources to ascertain the meaning of a statute.

"It is, of course, a solemn obligation of the judiciary to faithfully give effect to the laws enacted by the legislature, and to do so requires a determination of statutory meaning." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. "Therefore, the purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *Id.* Interpreting a statute proceeds under the plain-meaning rule. *Id.* ¶¶ 43–45.

The plain-meaning approach employs a methodology relying primarily on intrinsic sources to interpret a statute with limited reliance on extrinsic sources. *Id.* ¶ 43. Review of statutory history is an appropriate part of plain-meaning

analysis. *Cnty. of Dane v. LIRC*, 2009 WI 9, ¶ 27, 315 Wis. 2d 293, 759 N.W.2d 571 (citing *State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 52 n.9). Statutory history includes previously enacted and repealed statutes as well as changes made to statutes through the years. *Id.* Statutory history is an intrinsic source that is "part and parcel of a plain meaning interpretation." *Banuelos v. Univ. of Wisconsin Hosps. & Clinics Auth.*, 2023 WI 25, ¶ 25, 406 Wis. 2d 439, 988 N.W.2d 627. The statutory background is distinct from legislative history. *State ex rel. Kalal*, 271 Wis.2d 633, ¶ 52 n.9. Legislative history is an extrinsic source because it's a resource outside the text of a statute. *Id.* ¶ 50. Reliance on legislative history is limited to situations such as to confirm a plain-meaning interpretation or resolve textual ambiguity in a statute. *Id.* ¶ 51.

A statute's scope, context, structure, and purpose are perfectly relevant intrinsic sources for plain-meaning analysis. *In re Commitment of Lombard*, 2004 WI 95, ¶ 19, 273 Wis. 2d 538, 684 N.W.2d 103; *Brey v. State Farm Mut. Auto. Ins. Co.*, 2022 WI 7, ¶ 11, 400 Wis. 2d 417, 970 N.W.2d 1 ("A statute's context and structure are critical to a proper plain-meaning analysis."); *see also State v. Williams*, 2014 WI 64, ¶ 17, 355 Wis. 2d 581, 852 N.W.2d 467 ("In determining a statute's plain meaning, the scope, context, structure, and purpose are important.").

"[S]tatutory language should be 'interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes.'" *Osterhues v. Bd. of Adjustment for Washburn Cnty.*, 2005 WI 92, ¶ 24, 282 Wis. 2d 228, 698 N.W.2d 701 (quoting *State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 46). "[T]he plain meaning is seldom determined in a vacuum." *Id.* "[A]scertaining the plain meaning of a statute requires more than focusing on a single sentence or portion thereof." *State v. Ziegler*, 2012 WI 73, ¶ 43, 342 Wis. 2d 256, 816 N.W.2d 238. It may include looking "to surrounding

statutes to determine plain meaning." *Saint John's Communities, Inc. v. City of Milwaukee*, 2022 WI 69, ¶ 23, 404 Wis. 2d 605, 982 N.W.2d 78. "[T]he context of a statutory scheme is important to the plain meaning of the text" because "[s]tatutes are to be construed and harmonized with one another when possible." *Townsend v. ChartSwap, LLC*, 2021 WI 86, ¶ 16, 399 Wis. 2d 599, 967 N.W.2d 21.

"Properly applied, the plain-meaning approach is not 'literalistic'; rather, the ascertainment of meaning involves a 'process of analysis' focused on deriving the fair meaning of the text itself." *Brey*, 400 Wis. 2d 417, ¶ 11 (citing *State ex rel. Kalal*, 271 Wis. 2d 633, ¶¶ 46, 52). "'Literalness may strangle meaning.'" Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 355 (2012) (quoting *Utah Junk Co. v. Porter*, 328 U.S. 39, 44 (1946)), *quoted in Brey*, 400 Wis. 2d 417, ¶ 11. A court should reject a "hyper-literal approach" because "[s]tatutory interpretation centers on the 'ascertainment of meaning,' not the recitation of words in isolation." *Brey*, 400 Wis. 2d 417, ¶ 13 (citing *State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 47). A plain-meaning approach cannot contravene a "contextually manifest statutory purpose." *State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 49.

2. Canons of statutory construction aid in ascertaining the meaning of a statute.

This Court's "consideration of a statute's language and context is guided by well-established canons of statutory construction." *Belding v. Demoulin*, 2014 WI 8, ¶ 17, 352 Wis. 2d 359, 843 N.W.2d 373. Three canons of statutory construction are particularly relevant and useful here: (1) related-statutes; (2) prior-construction; and (3) harmonious-reading. The statutory interpretation principles articulated in *Kalal* conform with these three canons. *See Rector*, 407 Wis. 2d 321, ¶ 25 (citing *Kalal* within the context of the prior-

construction canon); *James v. Heinrich*, 2021 WI 58, ¶¶ 19–20, 397 Wis. 2d 517, 960 N.W.2d 350 (citing *Kalal* within the context of the related-statutes canon); *State v. Hemp*, 2014 WI 129, ¶ 29, 359 Wis. 2d 320, 856 N.W.2d 811 (citing *Kalal* within the context of the harmonious-reading canon); *see also In re T.L.E.-C.*, 2021 WI 56, ¶ 30, 397 Wis. 2d 462, 960 N.W.2d 391 (citing *Hemp*, 359 Wis. 2d 320, ¶ 29, as applying the harmonious-reading canon). While not rules of law, "[c]anons of statutory interpretation are aids to ascertain[ ] the meaning of a statute." *State v. Popenhagen*, 2008 WI 55, ¶ 42, 309 Wis. 2d 601, 749 N.W.2d 611.

a. Two statutes that have the same subject matter or common purpose are *in pari materia* and must be construed together.

Under the related-statutes canon, statutes "dealing with the same subject—being *in pari materia* (translated as 'in a like matter')—should if possible be interpreted harmoniously." Scalia & Garner, *supra*, 252. This canon "rests on two sound principles: (1) that the body of the law should make sense, and (2) that it is the responsibility of the courts, within the permissible meanings of the text, to make it so." *Id.* "The rule of *in pari materia*—like any canon of statutory construction—is a reflection of practical experience in the interpretation of statutes: a legislative body generally uses a particular word with a consistent meaning in a given context." *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972) (emphasis added).

The related-statutes canon operates in the same vein as the plain-meaning rule. *State v. Lasecki*, 2020 WI App 36, ¶ 33, 392 Wis. 2d 807, 946 N.W.2d 137. "It is a basic principle of statutory construction that a reviewing court may consider 'surrounding or closely-related statutes' to arrive at the statute's plain meaning." *Williams*, 355 Wis. 2d 581, ¶ 39 n.18 (quoting *State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 46).

This canon of statutory construction operates in conjunction with the presumption that the Legislature has full knowledge of existing statutes and court interpretations of them. *State ex rel. Campbell v. Twp. of Delavan*, 210 Wis. 2d 239, 255–56, 565 N.W.2d 209 (Ct. App. 1997); *see Erlenbaugh*, 409 U.S. at 244 (identifying the presumption within the discussion of the *in pari materia* canon). The presumption is well-accepted. *State v. Yakich*, 2022 WI 8, ¶ 35, 400 Wis. 2d 549, 970 N.W.2d 12. It aligns with the principle that the Legislature does not intend to create statutory conflict. *H.F. v. T.F.*, 168 Wis. 2d 62, 69 n.5, 483 N.W.2d 803 (1992).

The critical question under this canon is whether the statutes are *in pari materia*; that is, whether they are "relating to the same matter" or "[o]n the same subject." *In pari materia*, Black's Law Dictionary (12th ed. 2024). Statutes with no common aim or purpose that do not relate to the same matter are not *in pari materia*. *Wisconsin Bankers Ass'n (Inc.) v. Mut. Sav. & Loan Ass'n of Wisconsin*, 96 Wis. 2d 438, 454, 291 N.W.2d 869 (1980). But statutes do not have to be enacted simultaneously or refer to one another to be *in pari materia*. *In re Est. of Flejter*, 2001 WI App 26, ¶ 10, 240 Wis. 2d 401, 623 N.W.2d 552 (citation omitted). Statutes in the same chapter on the same subject matter are *in pari materia* and must be construed together. *James* 397 Wis. 2d 517, ¶ 19.

b. A judicial construction becomes part of the statute unless the legislature amends the statute in response to that construction.

Under the prior-construction canon, "'[i]f a statute uses words or phrases that have already received authoritative construction by the jurisdiction's court of last resort, or even uniform construction by inferior courts . . . they are to be understood according to that construction.'" *Est. of Miller v. Storey*, 2017 WI 99, ¶ 51, 378 Wis. 2d 358, 903 N.W.2d 759 (quoting Scalia & Garner, *supra*, 322). "The prior-

construction canon is an articulation of the principle that when a particular phrase has been given authoritative construction by the courts, it is to be understood according to that construction." *Rector*, 407 Wis. 2d 321, ¶ 32.

A prior judicial construction "becomes part of the statute unless [the statute is] subsequently amended by the legislature." *Wenke v. Gehl Co.*, 2004 WI 103, ¶ 31 n.17, 274 Wis. 2d 220, 682 N.W.2d 405. The Wisconsin Supreme Court "has long been committed to the principle that a construction given to a statute by the court becomes a part thereof, unless the legislature subsequently amends the statute to effect a change." *Progressive N. Ins. Co. v. Romanshek*, 2005 WI 67, ¶ 52, 281 Wis. 2d 300, 697 N.W.2d 417 (quoting *City of Sun Prairie v. PSC*, 37 Wis. 2d 96, 100, 154 N.W.2d 360 (1967).

This canon of statutory construction operates in tandem with legislative acquiescence doctrine. *See Est. of Miller*, 378 Wis. 2d 358, ¶ 51 (discussing the doctrine within the context of the canon). Under this doctrine, when the Legislature acquiesces or declines to change a statute interpreted by the courts, "it has acknowledged that the courts' interpretation of legislative intent is correct." *Zimmerman v. Wisconsin Elec. Power Co.*, 38 Wis. 2d 626, 634, 157 N.W.2d 648 (1968). The doctrine is weakest when there is legislative silence following a judicial decision; that is, the Legislature has left the statute alone. *Wenke*, 274 Wis. 2d 220, ¶¶ 31–37. The doctrine may be greater and applies when the Legislature amended a statute but declined to revise the interpreted word or phrase. *Est. of Miller*, 378 Wis. 2d 358, ¶ 51.

A corollary to legislative acquiescence doctrine is the principle that the courts are constrained not to alter a prior judicial statutory construction. *Zimmerman*, 38 Wis. 2d at 634. This principle has received some critique, such as when it's a lower court's interpretation. Scalia & Garner, *supra*, 324. But the principle functions better when it's a high court's prior construction. *Id.* at 324–25. Under this principle, with

the Legislature having acquiesced to the judicial construction of a statute, the courts have "correctly determined legislative intent, they have fulfilled their function," so the prior construction must not be disturbed. *Zimmerman*, 38 Wis. 2d at 634.

The prior-construction canon governs closely related statutes. *Rector*, 407 Wis. 2d 321, ¶ 34. "Statutes are closely related when they are in the same chapter, reference one another, or use similar terms." *State v. Reyes Fuerte*, 2017 WI 104, ¶ 27, 378 Wis. 2d 504, 904 N.W.2d 773. "Being within the same statutory scheme may also make two statutes closely related." *Id*. While this canon is at its strongest when interpreting the same statute, it still applies with less force to related statutes. *Rector*, 407 Wis. 2d 321, ¶ 32, *see also id*. ¶ 66 (concurring in part, dissenting in part).

c. When two statutes relate to the same subject matter or have a common purpose a court should harmonize them.

Under the harmonious-reading canon, "[t]he provisions of a text should be interpreted in a way that renders them compatible, not contradictory." *In re T.L.E.-C.*, 397 Wis. 2d 462, ¶ 30 (quoting Scalia & Garner, *supra*, 180). The canon operates under the principle that "there can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously." Scalia & Garner, *supra*, 180.

The harmonious-reading canon comports with the presumption of consistent usage. Under this presumption, a non-technical term or phrase does not change from one statute to another, particularly when the statutes have some relationship to one another. *CED Properties, LLC v. City of Oshkosh*, 2018 WI 24, ¶ 24, 380 Wis. 2d 399, 909 N.W.2d 136. The greater the connection or similarity between the statutes, the stronger the presumption. *See id*. ¶ 24 n.12 (citing Scalia

& Garner, *supra*,172–73.). This presumption may apply even when a term or phrase is used in a different chapter of the statutes. *See, e.g., Est. of Miller*, 378 Wis. 2d 358, ¶ 35 (relying on the presumption for consistent usage of "civil action").

The harmonious-reading canon and consistent usage presumption operate in alignment with the principle articulated in *Kalal* that statutory language is interpreted "in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 46. When two statutes relate to the same subject matter or have a common purpose a court should harmonize them, when possible, to avoid an absurd or unreasonable result. *Orion Flight Servs., Inc. v. Basler Flight Serv.*, 2006 WI 51, ¶ 35, 290 Wis. 2d 421, 714 N.W.2d 130. Application of this canon and presumption adhere to a core principle of our jurisprudence about the importance to promote predictability in the law. *See Manitowoc Co., Inc. v. Lanning*, 2018 WI 6, ¶ 31 n.26, 379 Wis. 2d 189, 906 N.W.2d 130 (explaining the rationale behind stare decisis).

B. "Separate occasions" in the domestic abuse repeater statute should have a meaning in harmony with the prior construction in the closely related habitual criminality statute.

The habitual criminality statute is an intrinsic source to discern the plain meaning of "separate occasions" in the domestic abuse repeater statute. *Guelig v. Guelig*, 2005 WI App 212, ¶ 24, 287 Wis. 2d 472, 704 N.W.2d 916. The statutes are nearby and closely related penalty enhancement statutes that share a common structure and statutory scheme, *infra* B. 1. A prior judicial construction made clear that each conviction is a separate occasion in the habitual criminality statute, even those from the same incident, *infra* B. 2. The habitual criminality and domestic abuse repeater statutes should have a harmonious construction, *infra* B. 3.

1. The domestic abuse repeater and habitual criminality statutes are *in pari materia* and must be construed together.

The domestic abuse repeater and habitual criminality statutes are *in pari materia*. They are surrounding and closely related statutes. *See State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 46 (statutory language interpreted in relation to surrounding and closely related statutes). They must be construed together. *See James*, 397 Wis. 2d 517, ¶ 19 (statutes in the same chapter on the same subject matter must be construed together).

The domestic abuse repeater and habitual criminality penalty enhancements are unquestionably surrounding statutes, as they reside next to one another in the same subchapter. *Compare* Wis. Stat. § 939.62 (increased penalty for habitual criminality) *and* Wis. Stat. § 939.621 (increased penalty for certain domestic abuse offenses), *with Brown Cnty. v. Brown Cnty. Taxpayers Ass'n*, 2022 WI 13, ¶ 42, 400 Wis. 2d 781, 971 N.W.2d 491 (surrounding statutes are instructive in reaching conclusion).

The domestic abuse repeater and habitual criminality statutes are closely related. These two enhancement statutes are in the same penalties subchapter in Wis. Stat. ch. 939, subch. IV. *See Reyes Fuerte*, 378 Wis. 2d 504, ¶ 27 (statutes in the same chapter are closely related). They are part of a statutory scheme governing penalty enhancements in that subchapter, specifically enhanced penalties based upon a person's prior criminal convictions. *See id.* ¶ 27 (statutes having the same statutory scheme are closely related). Although the statutes may not reference one another, courts have grouped them together as statutes that add enhancements to the penalties. *See, e.g., State v. Finley*, 2016 WI 63, ¶ 5, 370 Wis. 2d 402, 882 N.W.2d 761 (identifying these statutes among those that enhance a penalty).

The domestic abuse repeater and habitual criminality statutes have a similar structure, with both using the phrase "separate occasions." *See Reyes Fuerte*, 378 Wis. 2d 504, ¶ 27 (statutes using similar terms are closely related). The domestic abuse repeater penalty enhancement applies to a person with two or more qualifying convictions within the preceding ten years:

> "[D]omestic abuse repeater" means . . . [a] person who, during the 10-year period immediately prior to the commission of the crime for which the person is presently being sentenced if the convictions remain of record and unreversed, was convicted on 2 or more separate occasions of a felony or a misdemeanor [domestic abuse crime].[2]

Wis. Stat. § 939.621(1)(b) (footnote added). The habitual criminality penalty enhancement applies to an actor with three or more misdemeanor convictions within the preceding five years:

> The actor is a repeater . . . if the actor was convicted of a misdemeanor on 3 separate occasions during [the 5-year period immediately preceding the commission of the crime for which the actor presently is being sentenced],[3] which convictions remain of record and unreversed.

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[2] This brief uses "domestic abuse crime" to encapsulate qualifying convictions under the statute that includes a felony or a misdemeanor "for which a court imposed a domestic abuse surcharge under s. 973.055 (1), a felony or a misdemeanor for which a court waived a domestic abuse surcharge pursuant to s. 973.055 (4), or a felony or a misdemeanor that was committed in another state but that, had it been committed in this state, would have subjected the person to a domestic abuse surcharge under s. 973.055 (1) or that is a crime of domestic abuse under the laws of that state." Wis. Stat. § 939.621(1)(b).

[3] The bracketed phrase is earlier in this subsection and used here to identify the period that an actor is a repeater. Wis. Stat. § 939.62(2).

Wis. Stat. § 939.62(2) (footnote added). It is noteworthy that the circuit court found "the language to be similar between the statutes," even when it struck the penalty enhancement. (R. 27:3.) The circuit court exclaimed: "In fact, it's very similar." (R. 27:3.)

The phrase "separate occasions" is used in the same context in the habitual criminality and domestic abuse repeater penalty enhancement statutes. They have a common purpose with "[b]oth the ordinary [habitual criminality] repeater and domestic abuse repeater enhancers permit[ting] an increase in the defendant's maximum term of imprisonment." *State v. Hill*, 2016 WI App 29, ¶ 2, 368 Wis. 2d 243, 878 N.W.2d 709. They involve the same subject matter of penalty enhancements; that is, enhancing "a convicted criminal defendant's potential exposure to confinement." *State v. Saunders*, 2002 WI 107, ¶ 16 n.11, 255 Wis. 2d 589, 649 N.W.2d 263 (citing Wis. Stat. §§ 939.62, 939.621).

This Court should construe "separate occasions" in the domestic abuse repeater statute the same as in the habitual criminality statute. The statutes are *in pari materia* because they have a common purpose on the same subject matter of increasing a period of confinement based upon prior convictions. As closely related statutes in the same subchapter, they must be construed together. *James*, 397 Wis. 2d 517, ¶ 19.

2. "Separate occasions" in the domestic abuse repeater statute should have the same meaning as previously construed in the habitual criminality statute.

The prior-construction canon governs when statutes are closely related. *Rector*, 407 Wis. 2d 321, ¶ 34. As explained above, *supra* B. 1., the domestic abuse repeater and habitual criminality penalty enhancements are closely related statutes. In *Hill*, this Court identified the habitual criminality

statute as instructive to interpret the domestic abuse repeater statute. *Hill*, 368 Wis. 2d 243, ¶¶ 12–13. So a prior construction of "separate occasions" in the habitual criminality statute is helpful to the plain meaning analysis of that phrase in the domestic abuse repeater statute. *See Rector*, 407 Wis. 2d 321, ¶ 25 (prior interpretation of a closely related statute may be helpful in a plain meaning analysis).

The Legislature "did not act in a vacuum" when crafting and amending the domestic abuse repeater statute. *State v. Cole*, 2003 WI 112, ¶ 17, 264 Wis. 2d 520, 665 N.W.2d 328; *see State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 46 (statutory language is interpreted as part of a whole and in relation to closely-related statutes). The Legislature already had used "separate occasions" in the nearby and closely related habitual criminality statute. *Compare* 2011 Wis. Act 277 (creating Wis. Stat. § 939.621(1)(b)), *with* Wis. Stat. § 939.62(2) (2009–10). Before the Legislature added the phrase "separate occasions" to the domestic abuse repeater statute in 2012, the Wisconsin Supreme Court had twice examined the meaning of that phrase in the closely related habitual criminality statute. *Hopkins*, 168 Wis. 2d 802; *Wittrock*, 119 Wis. 2d 664.

In *Wittrock*, the court determined the plain meaning of the phrase "separate occasions" was ambiguous. *Whittrock*, 119 Wis. 2d at 670–71. The prior crimes in that case had taken place on different dates, but several of the convictions had occurred on the same date. *Id.* at 668. The defendant in *Wittrock* argued that convictions arising out of a single court appearance were not "separate occasions." *Id.* at 667. The Wisconsin Supreme Court disagreed, noting that the statute focused on the "quantity of crimes" rather than the "time of conviction." *Id.* at 674. So convictions arising out of the same court appearance were "separate occasions." *Id.* at 673–75. The court left unanswered whether the convictions could arise out of the same course of criminal conduct. *Id.* at 668.

Part of the difficulty in *Wittrock* defining "separate occasions" was that resorting to a dictionary provided little insight. *Id.* at 670. An "occasion" may mean "a time at which something happens" or it may have no temporal component and simply be a "happening, incident." *Id.* (citing Webster's New Collegiate Dictionary 794 (1977).) An "occasion" may simply mean an "event or happening." *Occasion*, The American Heritage Dictionary of the English Language, 1218 (5th ed. 2016). A "happening" is nothing more than an "occurrence." *Happening*, Merriam Webester's Collegiate Dictionary, 528 (10th ed. 1995). "Separate" similarly may or may not have a temporal component. It may mean nothing more than the cause of being "distinct or different." *Separate*, The American Heritage Dictionary, 1597. It may simply be a way to "distinguish" and "to make a distinction between," though it also could mean "to disperse in space or time." *Separate*, Merriam Webester, 1067. Together, the phrase "separate occasions" may simply mean distinct occurrences. *Compare separate*, The American Heritage Dictionary, *with Wittrock*, 119 Wis. 2d at 670 (*occasion* defined in Webster's New Collegiate Dictionary) and *happening*, Merriam Webester.

In *Hopkins*, the Wisconsin Supreme Court confirmed that each conviction constitutes a "separate occasion." *Hopkins*, 168 Wis. 2d at 805. The defendant in *Hopkins* argued that convictions arising out of "a single course of conduct are not committed on 'separate occasions.'" *Id.* The Wisconsin Supreme Court disagreed with the defendant, agreeing with the State that "it is the number of convictions that is important rather than when the crimes were committed." *Id.* The court determined that "separate occasions" must be interpreted in an "equitable way" that avoids "confusion and discrimination among defendants." *Id.* at 810. The unanimous Wisconsin Supreme Court interpreted "separate occasions" in the habitual criminality statute to

include convictions that arise out of a single course of conduct. *Hopkins*, 168 Wis. 2d 802.

The meaning of the phrase "separate occasions" in the habitual criminality statute became clear once construed by the court in *Hopkins*. The court determined the conviction for each crime constituted a separate occasion. *Id.* at 805. The court identified that this penalty enhancement statute was concerned with the quantity of crimes, *id.* at 810; it was not concerned with when the crimes or convictions occurred, *id.* at 809 (relying on *Wittrock*, 119 Wis. 2d at 674). Each conviction for the separate crime is a discrete occasion. *Hopkins*, 168 Wis. 2d at 805.

The Legislature acquiesced to the Wisconsin Supreme Court's interpretation of the phrase "separate occasions" in the habitual criminality statute. The Legislature has not disturbed the *Wittrock-Hopkins* interpretation of "separate occasions" in this statute, *compare* Wis. Stat. § 939.62(2) (2021–22), *with* Wis. Stat. § 939.62(2) (1991–92), *and* Wis. Stat. § 939.62(2) (1983–84) (no substantive change in the term), even while having amended Wis. Stat. § 939.62 at least a dozen and a half times since the *Wittrock-Hopkins* interpretation.[4] The presumption that the Legislature adopted or ratified the *Wittrock-Hopkins* interpretation of

[4] *See* 2023 Wis. Act 10 (enacted May 10, 2023); 2021 Wis. Act 76 (enacted Aug. 6, 2021); 2017 Wis. Act 128 (enacted Dec. 8, 2017); 2015 Wis. Act 366 (enacted Apr. 19, 2016); 2007 Wis. Act 116 (enacted Mar. 19, 2008); 2005 Wis. Act 14 (enacted June 7, 2005); 2001 Wis. Act 109 (enacted July 26, 2002); 1999 Wis. Act 188 (enacted May 17, 2000); 1999 Wis. Act 85 (enacted Apr. 21, 2000); 1997 Wis. Act 326 (enacted July 1, 1998); 1997 Wis. Act 295 (enacted June 16, 1998); 1997 Wis. Act 283 (enacted June 15,1998); 1997 Wis. Act 219 (enacted Apr. 29, 1998); 1995 Wis. Act 448 (enacted June 24, 1996); 1995 Wis. Act 77 (enacted Nov. 17,1995); 1993 Wis. Act 486 (enacted May 27, 1994); 1993 Wis. Act 483 (enacted May 27, 1994); 1993 Wis. Act 289 (enacted Apr. 13, 1994); 1989 Wis. Act 85 (enacted Dec. 5, 1989).

"separate occasions" in the habitual criminality statute is strengthened by the Legislature having made amendments to this statute and having not amended or changed the court's interpretation. *York v. Nat'l Cont'l Ins. Co.*, 158 Wis. 2d 486, 497, 463 N.W.2d 364 (Ct. App. 1990).

Under the prior-construction canon, no court should alter the meaning of "separate occasions" in the habitual criminality statute. As the Wisconsin Court of Appeals, this Court cannot alter the Wisconsin Supreme Court's prior construction. *State v. Arberry*, 2017 WI App 26, ¶ 5, 375 Wis. 2d 179, 895 N.W.2d 100, *aff'd*, 2018 WI 7, ¶ 5, 379 Wis. 2d 254, 905 N.W.2d 832 ("Neither we nor the circuit court may overrule a holding of our supreme court."). Even the Wisconsin Supreme Court is constrained. *Zimmerman*, 38 Wis. 2d at 634. Having correctly identified the Legislature's meaning of "separate occasions" in the habitual criminality statute, the Wisconsin Supreme Court has fulfilled its function, so the prior construction should not be disturbed. *Id.*

This Court should construe "separate occasions" in the domestic abuse repeater statute the same as the prior construction in the closely related habitual criminality statute. *Rector*, 407 Wis. 2d 321, ¶ 34 (prior construction governs closely related statutes). The operation and meaning of "separate occasions" appear to be settled in the habitual criminality statute. *Id.* ¶ 25. It has had a plain and understood meaning since *Hopkins* resolved the issue over three decades ago. *Hopkins*, 168 Wis. 2d at 805. The Legislature amended the domestic abuse repeater statute after *Wittrock* and *Hopkins*, crafting Wis. Stat. § 939.621(1)(b) as a nearby and closely related penalty enhancement to the habitual criminality statute. They must be construed together as closely related statutes in the same subchapter. *James*, 397 Wis. 2d 517, ¶¶ 19–20.

3. The domestic abuse repeater statute should be construed in harmony with the habitual criminality statute.

Under proper application of the plain-meaning rule, a court should reasonably construe surrounding or closely-related statutes, seeking to harmonize them. *Reyes Fuerte*, 378 Wis. 2d 504, ¶¶ 26–29. Harmonizing two statutes related to the same subject matter or having a common purpose avoids an absurd or unreasonable result. *Orion Flight Servs., Inc.*, 290 Wis. 2d 421, ¶ 35. Harmonization aligns with the presumption of consistent usage to ensure a non-technical term or phrase does not change from one statute to a related statute. *CED Properties, LLC*, 380 Wis. 2d 399, ¶ 24.

This Court should construe the domestic abuse repeater statute in harmony with the nearby and closely related habitual criminality statute. There should be a consistent usage of "separate occasions" among these penalty enhancement statutes. *Id*. The statutes are *in pari materia*;, *supra* B. 1., such that the prior construction of the habitual criminality statute provides a plain meaning to "separate occasions" in the domestic abuse repeater statute, *supra* B. 2. It is absurd and unreasonable to have the same phrase used in these penalty enhancement statutes within the same subchapter to have contradictory meanings. *State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 46. A harmonious reading avoids such an absurdity.

C. "Separate occasions" in the domestic abuse repeater statute should not have a disharmonious construction derived from an unrelated statute interpreted in *Rector* that the Legislature swiftly rejected.

The sex offender registration statute, as interpreted in *Rector*, is an unpersuasive source to discern the plain meaning of the domestic abuse repeater statute. The statutes

are unrelated, residing in different chapters of the statutes, *infra* C. 1. The prior construction in *Rector* was clearly and unequivocally rejected by the Legislature, *infra* C. 2. Rector created disharmony within the statutes, *infra* C. 3. The Legislature brought harmony to the statutes, *id*., that this Court shouldn't disturb.

1. The sex offender registration statute is not closely related to the penalty enhancement statutes in Chapter 939.

An unrelated statute is not a reliable source under the plain-meaning rule. *Williams*, 355 Wis. 2d 581, ¶ 39 n.18 ("citations to unrelated statutes are not persuasive"). Statutes in different chapters that do not use similar terms and do not reference one another are not closely related statutes. *Int. of A.A.*, 2020 WI App 11, ¶ 25 n.10, 391 Wis. 2d 416, 941 N.W.2d 260, (citing *Reyes Fuerte*, 378 Wis. 2d 504, ¶ 27.) Even statutes using the same phrase or term may not be sufficiently related to prescribe an outcome under a plain-meaning analysis. *See, e.g., Rector*, 407 Wis. 2d 321, ¶ 25 (sex offender registration statute not closely related to the habitual criminality statute).

The sex offender registration statute in Chapter 301 is not closely related to the penalty enhancement statutes in Chapter 939. In *Rector*, the court explained that "Wis. Stat. § 301.45(5)(b)1. is not so closely related to § 939.62(2) that the court must interpret all words and phrases in a singular way." *Rector*, 407 Wis. 2d 321, ¶ 32. "It is undeniable that the two statutes reside in different chapters governing different subject matter." *Id*. ¶ 35. The sex offender registration statute and habitual criminality statute "[e]ach uses the phrase 'separate occasions,' but the surrounding structure and language of each statute is far from identical." *Id*. ¶ 38. "There is no such direct link between the sex offender registration statute and the criminal repeater statute." *Id*. The court concluded in *Rector* that the sex offender registration statute

and the penalty enhancement under review "do not fit the definition of closely related." *Id.* ¶ 35.

The sex offender registration statute reviewed in *Rector* had a different structure from the penalty enhancement statutes. The phrase "separate occasions" in that statute qualified the verb "has . . . been convicted" in a passage that read:

> A person . . . shall continue to comply with the requirements of this section until his or her death if . . . [t]he person has, on 2 or more separate occasions, been convicted or found not guilty or not responsible by reason of mental disease or defect for a sex offense.

Wis. Stat. § 301.45(5)(b)1. (2021–22). This structure made clear that the phrase was "modifying the conviction for a sex offense rather than the commission of a sex offense." *Rector*, 407 Wis. 2d 321, ¶ 13. "As such, a person must comply with registration requirements for life if the event of conviction occurred at two or more separate (set apart) times." *Id.* Under this framework, the sex offender registration statute didn't apply to convictions "filed in a single case and occurred during the same hearing." *Id.* ¶ 14.

Rector does not govern here for the same reason that *Wittrock* and *Hopkins* did not dictate an outcome in that case. The sex offender registration statute is not closely related to the penalty enhancement statutes. The court in *Rector* didn't ignore canons of statutory interpretation; rather, it determined the statutes weren't closely related—they weren't *in pari materia*—such that the prior-construction canon didn't apply. *See id.* ¶¶ 32–41.

This Court should not construe "separate occasions" in the domestic abuse repeater statute the same as the sex offender registration statute reviewed in *Rector*. The statutes do not fit the definition of closely related; they are not *in pari materia*. *See id.* ¶ 35. The unrelated sex offender registration statute is not a persuasive source as to the meaning of the

domestic abuse repeater statute. *Williams*, 355 Wis. 2d 581, ¶ 39 n.18.

2. "Separate occasions" in the domestic abuse repeater statute should not have a construction affirmatively rejected by the Legislature following *Rector*.

A prior construction doesn't become part of a statute when it's amended by the Legislature in response to that judicial construction. *Progressive N. Ins. Co.*, 281 Wis. 2d 300, ¶ 52. The Legislature may overturn a judicial interpretation. *State v. Reed*, 2005 WI 53, ¶ 52, 280 Wis. 2d 68, 695 N.W.2d 315 (Abrahamson, C.J., concurring). Such an amendment, results in the prior judicial construction not becoming part of the statute. *Wenke v. Gehl Co.*, 274 Wis. 2d 220, ¶ 31 n.17.

There had been a question raised as to the meaning of "separate occasions" in the sex offender registration statute before *Rector*. Years earlier, the Secretary for the Department of Corrections had requested an opinion with the Attorney General opining in September 2017 that "'separate occasions' . . . refers to multiple convictions, regardless whether they were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint." Wis. Op. Att'y Gen. OAG-02-17 (Sept. 1, 2017)[5] (interpreting the phrase in Wis. Stat. § 301.46).[6] In *Rector*, the court took the contrary position concluding that "convictions based on charges filed in a single case and occurring during the same

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[5] Wis. Op. Att'y Gen. OAG-02-17 (Sept. 1, 2017), https://docs.legis.wisconsin.gov/misc/oag/recent/oag_2_17.pdf.

[6] The phrase "separate occasions" was used both in Wis. Stat. §§ 301.45(5)(b)(1. (2021–22) and 301.46(2m)(am)1. (2021–22) that are closely related statutes such that the interpretation in one statute would be the same interpretation in the other statute under the related-statutes canon, *see infra.* A. 2. a.

hearing do not constitute convictions on 'separate occasions.'" *Rector*, 407 Wis. 2d 321, ¶ 11.

The Legislature responded clearly and unequivocally, amending the sex offender registration statute in response to *Rector*. The court filed its opinion in *Rector* in late May 2023. *Rector*, 407 Wis. 2d 321. In early January 2024, the Legislature introduced a bill that was swiftly enacted in March 2024. 2023 Wis. Act 254 (enactment of 2023 Senate Bill 874). Prior to the enactment, the statute contained the passage that read: "The person has, on 2 or more separate occasions, been convicted." Wis. Stat. § 301.45(5)(b)1. (2021–22). After the enactment, the passage was completely rewritten to read: "The person has been convicted 2 or more times, including convictions that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint." Wis. Stat. § 301.45(5)(b)1.

The Legislature made the act's initial applicability retroactive to September 2, 2017—the day following the Attorney General opinion. *Compare* 2023 Wis. Act 254, § 5 (initial applicability), *with* OAG-02-17, ¶ 18 (Sept. 1, 2017). The bill codified "the attorney general opinion, OAG-02-17, regarding the interpretation of the statutory phrase 'two or more separate occasions' as it relates to the sex offender registry and notification requirements." 2023 Wis. S.B. 874. *See Dairyland Greyhound Park, Inc. v. Doyle*, 2006 WI 107, ¶ 32, 295 Wis. 2d 1, 719 N.W.2d 408 (analysis printed on a bill is indicative of legislative intent).[7]

The Legislature effectively overturned *Rector*. *See Reed*, 280 Wis. 2d 68, ¶ 52 (Abrahamson, C.J., concurring). The Legislature went further than simply amending the sex offender registration statute; it made the act's initial

[7] Legislative history may be used to confirm or verify a plain-meaning interpretation. *State ex rel. Kalal v. Cir. Ct. for Dane Cnty*. 2004 WI 58, ¶ 51, 271 Wis. 2d 633, 681 N.W.2d 110.

applicability retroactive more than five years before the *Rector* opinion. *Compare* 2023 Wisconsin Act 254, § 5 (initial applicability of September 2, 2017), *with Rector*, 407 Wis. 2d 321 (filed on May 23, 2023). The judicial construction in *Rector* didn't become part of the statute because the Legislature effectuated a change in the law by amending the statute. *State v. Rosenburg*, 208 Wis. 2d 191, 196, 560 N.W.2d 266 (1997).

This Court should not construe "separate occasions" in the domestic abuse repeater statute the same as the prior construction in *Rector* that was affirmatively rejected by the Legislature. An overturned construction of an unrelated statute is not persuasive. *Williams*, 355 Wis. 2d 581, ¶ 39 n.18.

3. The Legislature fixed the disharmony in the statutes caused by *Rector*.

There presently is no disharmony in the statutes as to the meaning of "separate occasions." The prior judicial construction in *Rector* didn't become part of the statute because the Legislature responded by promptly amending the statute. *Wenke*, 274 Wis. 2d 220, ¶ 31 n.17. That phrase is no longer used in the sex offender registration statute. *See* 2023 Wis. Act 254, § 1 (amending Wis. Stat. § 301.45(5)(b)1.).

The Legislature did more than amend the sex offender registration statute; it made the enactment retroactive to align with the Attorney General opinion that was in harmony with the *Wittrock-Hopkins* interpretation. *Compare* 2023 Wis. Act 254, § 5 (retroactive application), *with* OAG-02-17, ¶¶ 2, 10–12, 18. The court in *Rector* had acknowledged that its decision may create "inconsistency or confusion" due to the contradictory meanings of the phrase "separate occasions," but had thought it was "outweighed by the clear and plain meaning of § 301.45(5)(b)1." *Rector*, 407 Wis. 2d 321, ¶ 39.

Such disharmony was promptly remedied by the Legislature's swift and decisive enactment of 2023 Wisconsin Act 254.

This Court should not create disharmony where there is none. Reliance on the court's opinion in *Rector* is misguided. *Rector* does not bind or even guide this Court's construction of "separate occasions" in the domestic abuse repeater statute.

D. The circuit court erred by relying on *Rector* to construe the domestic abuse repeater statute and by distinguishing the habitual criminality statute interpreted in *Wittrock* and *Hopkins*.

The circuit court committed two errors in its decision striking the domestic abuse repeater penalty enhancement. First, the circuit court erroneously relied upon an interpretation from *Rector* that had been soundly rejected by the Legislature. Second, the circuit court erroneously thought the domestic abuse repeater and habitual criminality statutes weren't closely related.

The circuit court erred by relying on *Rector* to construe the domestic abuse repeater statute. The circuit court relied, in part, on *Rector* to believe that "separate occasions" means "that the convictions arose out of two separate incidents." (R. 23:7.) Such a reliance was misguided because the Legislature soundly rejected *Rector's* interpretation, *supra* C. 2. The retroactive application of the Legislature's amendment made clear that the term "separate occasions" previously in the sex offender registration statute included "convictions that were part of the same proceeding, occurred on the same date, or were included in the same criminal complaint." *Compare* 2023 Wis. Act 254, § 1 (amending Wis. Stat. § 301.45(5)(b)1.), *with id.*, § 5 (retroactive initial applicability).

The circuit court compounded its error when it thought the domestic abuse repeater and habitual criminality penalty enhancements weren't closely related statutes. The circuit court conceded that "[i]t is true the general repeater and domestic abuse repeater statutes are more closely related than the sex registry statute." (R. 23:7.) The circuit court found the domestic abuse repeater and habitual criminality penalty enhancements' "language to be similar between the statutes. In fact, it's very similar." (R. 27:3.) Despite these concessions, the circuit court viewed "the impact of prior convictions on separate occasions in sex registry and domestic abuse cases to be significantly different than with the general repeater statute." (R. 23:7.)

The circuit court only identified one difference of consequence between the domestic abuse repeater and habitual criminality statutes. (R. 23:7.) Both statutes increase the confinement period by two years; the difference is the penalty classification of a felony versus an enhanced misdemeanor. *Compare* Wis. Stat. § 939.62(1)(a) (two years as an enhanced misdemeanor), *with* Wis. Stat. § 939.621(2) (two years as a felony). The court said it seemed "more appropriate, that in order to be labeled a felon," the prior domestic abuse convictions must arise "out of at least two separate incidents." (R. 23:7, 8.)

Such an exclusive focus on penalty classification is incongruous with the test for determining whether statutes are closely related. *See Reyes Fuerte*, 378 Wis. 2d 504, ¶ 27 (citation omitted) ("Statutes are closely related when they are in the same chapter, reference one another, or use similar terms. . . . Being within the same statutory scheme may also make two statutes closely related."). As surrounding statutes in the same subchapter using the same phrase, the domestic abuse repeater and habitual criminality penalty enhancements are closely related, *supra* B. 1. This Court already has relied upon the habitual criminality statute as

instructive to construe the meaning of the domestic abuse repeater statute. *Hill*, 368 Wis. 2d 243, ¶¶ 12–13.

This Court should conclude the circuit court erred in striking the domestic abuse repeater. The circuit court did not apply the full framework for statutory interpretation articulated in *Kalal*. The circuit court referenced some statutory principles. (R. 23:6.) But the circuit court did not apply the level and depth of analysis contemplated by the plain-meaning rule. The circuit court failed to embrace the accepted meaning provided from intrinsics sources, such as the prior *Wittrock-Hopkins* construction and the meaning articulated by the Legislature when it amended the sex offender registration statute in response to *Rector*. This Court should reverse.

* * * * *

Proper application of the plain-meaning rule is not a hyper-literalistic approach. *Brey*, 400 Wis. 2d 417, ¶¶ 11–13. It is a process of analysis to ascertain a fair meaning, *id*. relying on intrinsic sources that includes statutory history. *Banuelos*, 406 Wis. 2d 439, ¶ 25. Surrounding or closely-related statutes should be harmonized to avoid unreasonable results. *Guelig*, 287 Wis. 2d 472, ¶ 24. Here, the plain-meaning rule and canons of statutory construction align and prescribe that "separate occasions" should have the same meaning in the domestic abuse repeater and habitual criminality statutes.

CONCLUSION

This Court should reverse the circuit court's order because Ricketts qualifies as a domestic abuse repeater, having been convicted on two or more "separate occasions" as that phrase has been previously construed in the habitual criminality statute.

Dated this 11th day of February 2025.

Respectfully submitted,

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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 7998 words.

Dated this 11th day of February 2025.

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CERTIFICATE OF EFILE/SERVICE

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

Dated this 11th day of February 2025.

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