STATE OF WISCONSIN

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

DISTRICT IV

Case No. 2025AP387-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

T.R.T.,

Defendant-Appellant.

ON APPEAL FROM AN ORDER OF COMMITMENT FOR TREATMENT (INCOMPETENCY) ENTERED IN THE MONROE COUNTY CIRCUIT COURT, THE HONORABLE RICHARD A. RADCLIFFE, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

T.R.T. was charged with repeated sexual assault of a child as a persistent repeater after his daughter reported that he frequently sexually abused her when she was between the ages of 13 and 16 years old. During the pretrial proceedings, T.R.T.'s trial attorney raised concerns about T.R.T.'s competency to proceed. The circuit court found that T.R.T. was not currently competent to stand trial but was likely to regain competency within the applicable statutory timeframe with appropriate treatment.

This Court should affirm the circuit court's decision that T.R.T. was likely to regain competency with treatment. A circuit court's decision as to whether a defendant is likely to regain competency should be upheld unless clearly erroneous—the same standard of review that appellate courts apply to the circuit court's competency decision. But regardless of the standard of review applied, the circuit court's decision here was sound. The court heard evidence that T.R.T.'s impairment was attributable in significant part to treatable mental illness. It also heard evidence that T.R.T. had very recently been able to normally interact with jail staff and get his personal and medical needs met, suggesting that his cognitive deficiencies were perhaps not so permanent and profound that he could not benefit from treatment for his mental illness. As the finder of fact making a judicial, rather than medical decision, the circuit court was not bound to accept T.R.T.'s expert's opinion that T.R.T. would not benefit from treatment and attain competency. The court's decision should be upheld.

ISSUE PRESENTED

Did the circuit court err when it determined that T.R.T. was likely to regain competency within 12 months with treatment?

The circuit court answered: No.

This Court should answer: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication.

STATEMENT OF THE CASE

T.R.T.'s 17-year-old daughter reported that T.R.T. frequently sexually assaulted her when she was between the ages of 13 and 16 years old. (R. 2:3–8.) The State charged T.R.T. with repeated sexual assault of a child, incest, and child enticement, all as a persistent repeater. (R. 2:1–2.) T.R.T. was also charged with causing mental harm to a child, two counts of exposing genitals, pubic area, or intimate parts, and felony bail jumping. (R. 2:3.)

Over a year and a half after the charges were filed, T.R.T.'s trial counsel filed a letter with the court that raised concerns about T.R.T.'s competency. (R. 78:1.) The court ordered a competency examination. (R. 82.)

Dr. Borra, a forensic psychiatrist, examined T.R.T. and concluded that he was competent. (R. 84:5.) Dr. Borra explained that he believed T.R.T. was feigning impairment during his evaluation for several reasons. (R. 84:5.) First, Dr. Borra noted that there was "a significant discrepancy" between how T.R.T. acted during his examination with Dr. Borra and how he had previously acted with the medical and correctional staff at the jail. (R. 84:5.) During the examination T.R.T. repeatedly answered "I don't know" to

very simple questions about himself, but T.R.T.'s medical records and reports from two jail staff members suggested that T.R.T. had been able to communicate clearly with staff and get his needs met during his past two years in jail. (R. 84:2–6.) Second, jail records "indicate [T.R.T.] has not reported any psychiatric symptoms and has not displayed any psychiatric symptoms that would explain the level of impairment" that T.R.T. presented at the evaluation. (R. 84:5.) Third, T.R.T. claimed not to know his name or date of birth, but "[t]he capacity to remember one's name and date of birth is preserved even in the most severe cases of psychosis and mania." (R. 84:5.) Fourth, T.R.T.'s pattern of impairment during his evaluation was not consistent with any psychiatric diagnosis. (R. 84:5.) Finally, T.R.T.'s "frequent response of 'I don't know' during the evaluation indicates evasiveness and is also indicative of feigning impairment." (R. 84:5.)

At T.R.T.'s trial counsel's request, T.R.T. was also examined by Dr. Benson, a licensed psychologist. (R. 86.) Dr. Benson concluded that T.R.T. was not competent to proceed to trial, and that he would not become competent within the statutory timeframe. (R. 86:19.) Dr. Benson opined that T.R.T. primarily presented with schizoaffective disorder, bipolar type, and major neurocognitive disorder, and that these disorders "compromise his ability to understand important legal concepts or apply them in a factual or rational manner to this case." (R. 86:18.) He also diagnosed T.R.T. with PTSD, intellectual developmental disorder, and inhalant use disorder. (R. 86:14.) Dr. Benson further opined that due to his neurocognitive deficits, T.R.T. was not amenable to treatment. (R. 86:19.)

Two competency hearings were held, at which Dr. Borra, Dr. Benson, and two staff members from the jail where T.R.T. was being held testified. (R. 102; 110.) Dr. Borra and Dr. Benson maintained their positions regarding T.R.T.'s competency. (R. 102:22; 110:41.) On cross-examination,

Dr. Benson opined that schizoaffective disorder can be treated effectively with antipsychotic medications, although he believed that T.R.T.'s ability to benefit from treatment was limited by his low cognitive function. (R. 110:76.) He also opined that PTSD can be treated. (R. 110:80.)

Correctional sergeant Todd Evers also testified and explained that he had observed "two different demeanors" from T.R.T—in a general setting, T.R.T. interacted with other inmates and staff, but on the days when he was being evaluated by a psychologist or going to court, "it was very quiet, head down." (R. 102:63–64.) Sergeant Evers explained that he had observed that T.R.T. was capable of "carr[ying] on a normal conversation, responding . . . and returning questions," and that T.R.T. had made and followed up on requests regarding his living conditions in jail. (R. 102:65–67, 69.)

The circuit court determined that T.R.T. was not competent to proceed but likely to become competent within the relevant statutory timeframe.[1] (R. 114:17.) The court explained that it found both Dr. Borra and Dr. Benson credible, and that this case presented "more an issue of the weight the Court gives to their reports, opinions and testimony." (R. 114:7.) On the issue of whether T.R.T. was likely to be restored to competency, the court "[didn't] find . . . [Dr. Benson's] opinion on restoration to be solely determinative." (R. 114:16.) The court explained that Dr. Benson's opinion that T.R.T. was not likely to be restored to competency with treatment was "inconsistent with the other evidence in this case," including T.R.T.'s observed behaviors during his time in jail and the fact that T.R.T. had chronic mental issues (the schizoaffective disorder and PTSD

[1] In this case, 12 months. Wis. Stat. § 971.14(5)(a)1.

in particular) that contributed to his incompetency and were treatable. (R. 114:16–17.) The court further noted that:

> Doctor Benson's opinion is a little bit contradictory because he relies upon the mental health history and the schizophrenia and the PTSD when determining that he's not competent to proceed, but when it comes to restoration, he doesn't mention the potential impact of restorative treatment.
>
> He just opines that it won't have . . . any benefit because of the cognitive impairment, essentially that his ability to understand will never get any better. I think that fails to consider the impact upon his mental health that restoration can provide.

(R. 114:17.)

Based on its findings, the circuit court ordered T.R.T. committed to the Department of Health Services (DHS) for treatment. (R. 113:2.) T.R.T. appeals the court's determination that he was likely to regain competency with appropriate treatment.

ARGUMENT

The circuit court did not err when it found that T.R.T. was likely to regain competency with treatment.

A. The finding of competency is a judicial determination, not a medical determination.

The State cannot try a defendant who is incompetent. Wis. Stat. § 971.13(1). "[T]he standard for determining competency to stand trial . . . requires that a defendant is able to understand the proceedings against him and to assist in his own defense." *State v. Klessig*, 211 Wis. 2d 194, 211, 564 N.W.2d 716 (1997).

When there is a reason to doubt a defendant's competency to stand trial, the circuit court must follow the

procedures set out in Wis. Stat. § 971.14. *State v. Byrge*, 2000 WI 101, ¶ 29, 237 Wis. 2d 197, 614 N.W.2d 477. The circuit court must first appoint one or more examiners to perform a competency evaluation. Wis. Stat. § 971.14(2). Unless all parties waive the opportunity to present evidence beyond the examiner's report, the court then conducts a competency hearing. Wis. Stat. § 971.14(4)(b). If the defendant claims incompetence or stands mute (as he did here), the State must prove by the "greater weight of the credible evidence that the defendant is competent."[2] *Id.*

If the circuit court finds that the defendant is competent, the criminal proceedings resume. Wis. Stat. § 971.14(4)(c). If the defendant is found not competent and not likely to become competent within the statutorily prescribed time period—12 months or the length of the maximum sentence for the most serious crime charged, whichever is less—the charges are suspended and the defendant released, subject to the provisions of Wis. Stat. § 971.14(6)(b). Wis. Stat. § 971.14(4)(d), (5)(a)1. If, on the other hand, "the court determines that the defendant is not competent but is likely to become competent within the [relevant time frame] if provided with appropriate treatment, the court shall suspend the proceedings and commit the defendant to the custody of [DHS]." Wis. Stat. § 971.14(5)(a)1.

Importantly, "[c]ompetency to stand trial constitutes a judicial inquiry, not a medical determination." *Byrge*, 237 Wis. 2d 197, ¶ 31. Thus, the circuit court is "not required to accept the testimony of experts." *State v. Smith*, 2016 WI 23, ¶ 55, 367 Wis. 2d 483, 878 N.W.2d 135. "The aims of a

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[2] Unlike the question of competency, Wis. Stat. § 971.14 does not specify any burden of proof for the question of whether the defendant is likely to be restored to competency with treatment. T.R.T. does not develop an argument that a particular burden of proof applies, or that it would matter in his case. As such, the State does not address the matter further.

competency hearing are modest," and "[e]laborate psychiatric evaluations sometimes introduce a clinical diagnosis that may not speak to competency to proceed." *Byrge*, 237 Wis. 2d 197, ¶ 48. Even if the defendant has a history of psychiatric illness, "a medical condition does not necessarily render the defendant incompetent to stand trial." *Smith*, 367 Wis. 2d 483, ¶ 37 (quoting *State ex rel. Haskins v. County Court of Dodge County*, 62 Wis. 2d 250, 265, 214 N.W.2d 575 (1974)). For instance, evidence of intellectual disability, such as a low IQ score, is "generally insufficient to give rise to a finding of incompetence to stand trial" in and of itself. *State v. Garfoot*, 207 Wis. 2d 214, 226, 558 N.W.2d 626 (1997). Instead, "the determination of competence is an individualized, fact-specific decision" based on the particular defendant's characteristics. *Id.* at 227.

B. A court's finding that the defendant is likely to regain competency with treatment during the statutory timeframe should be upheld unless clearly erroneous.

A circuit court's finding of competency is upheld unless it is "clearly erroneous." *Byrge*, 237 Wis. 2d 197, ¶ 45. The reviewing court searches the record for evidence that supports the circuit court's finding of competency. *Smith*, 367 Wis. 2d 483, ¶ 56. The reviewing court should affirm unless the circuit court's finding of competency is "totally unsupported by facts in the record." *Id.* ¶ 49.

T.R.T. asks this Court to apply a different standard of review to the circuit court's finding that the defendant is "likely to become competent . . . if provided with appropriate treatment." Wis. Stat. § 971.14(5)(a)1. Specifically, he contends that the "likely to become competent" finding should be reviewed as a mixed question of law and fact, similar to how a circuit court's determination that an individual is a "proper subject for treatment" under Wis. Stat. § 51.20(1)(a)1. is reviewed in civil commitment proceedings. (T.R.T.'s Br. 12–

15.) The State disagrees and contends the "likely to become competent" finding, just like the competency finding, is a "functionally factual inquir[y]" that should be subject to the clearly erroneous standard of review. *Byrge*, 237 Wis. 2d 197, ¶ 33.

Like T.R.T., the State has not found any cases specifically discussing the standard of review for the circuit court's determination that the defendant is likely to regain competency with treatment under Wis. Stat. § 971.14(5)(a)1. The State agrees that the question of what standard of review applies is itself a question of law that this Court reviews de novo. *Byrge*, 237 Wis. 2d 197, ¶ 32.

As the Wisconsin and United States Supreme Courts have acknowledged, "[t]he difference between constitutional facts, mixed questions of fact and law, and historical facts, or simply questions of fact," and thus, the appropriate standard of review, "is 'often fuzzy at best.'" *Id.* ¶ 39 (quoting *Container Corp v. Franchise Tax Bd.*, 463 U.S. 159, 176 (1983)). As such, deciding how to label a particular issue "often is more a matter of allocation than analysis, an allocation in which the Court recognizes that one judicial actor is better positioned than another to decide a matter." *Id.* ¶ 39.

In *Byrge* and *Garfoot*, the Wisconsin Supreme Court recognized that the circuit court was better positioned to decide whether a defendant was competent and thus held that the clearly erroneous standard of review applied. *Garfoot*, 207 Wis. 2d at 225; *Byrge*, 237 Wis. 2d 197, ¶ 45. The same reasoning applies to the "likely to become competent" finding. The "trial court is in the best position to observe the witnesses and the defendant and to weigh the credible evidence on both sides" when finding whether a defendant is likely to become competent in the future, just as it is when finding whether the defendant is currently competent. *Garfoot*, 207 Wis. 2d at 225. Both determinations are highly fact-specific and individualized. *See id.* at 227. And both determinations can

hinge on the circuit court's observations of the witnesses' and defendant's conduct and demeanor, which the appellate court cannot observe. *See Byrge*, 237 Wis. 2d 197, ¶¶ 44, 48.

Fundamentally, both the contemporaneous competency finding and the "likely to become competent" finding are about the same core issue—the defendant's capacity to understand the criminal proceedings and assist in his defense. It makes little sense to apply two different standards of review depending on whether the court's finding is about the defendant's capacity now versus his potential capacity in the future.

Additionally, applying the clearly erroneous standard of review would be consistent with how other fact-specific decisions in the competency context are reviewed—including decisions related to the treatment of the defendant to restore competency. For instance, when issuing an involuntary medication order, a circuit court must determine whether the State has met the four factors outlined by the United States Supreme Court in *Sell*. *Sell v. United States*, 539 U.S. 166, 180–81 (2003). The second *Sell* factor asks (in part) whether the medication is "substantially likely to render the defendant competent to stand trial." *Id.* at 181. "The majority of [federal] circuits that have considered the issue" concluded that this factor "present[s] factual questions subject to clear error review."[3] *United States v. Diaz*, 630 F.3d 1314, 1330 (11th Cir. 2011). This is because the question of whether a particular treatment would be substantially likely to render the defendant competent to stand trial "typically involves substantial questions of fact" and "[r]esolution of such

[3] Wisconsin courts have not yet addressed the question of the appropriate standard of review for the *Sell* factors, although this Court has recognized that almost all federal circuits treat the last three *Sell* factors "as fact questions subject to clearly erroneous review." *State v. J.D.B.*, 2024 WI App 61, ¶¶ 33–34, 414 Wis. 2d 108, 13 N.W.3d 525.

questions is best left to the [trial] court." *United States v. Hernandez-Vasquez*, 513 F.3d 908, 915 (9th Cir. 2008).

In other words, the second *Sell* factor asks a similar type of question to the one at issue here—whether the defendant is likely to become competent if he receives treatment—and the majority of courts that have considered the issue have determined that this question is subject to clearly erroneous review. *Diaz*, 630 F.3d at 1330.[4] This Court should do the same here.

Instead of looking to how similar determinations are reviewed in the competency context, T.R.T. encourages this Court to look outside of the competency context to civil commitment proceedings under chapter 51. (T.R.T.'s Br. 13–15.) This Court should decline.

Although on a superficial level the question of who is a "proper subject for treatment" under chapter 51 and who is "likely to become competent" with treatment may seem similar, there are fundamental differences that speak to whether the circuit court or the appellate court is in a better position to resolve each question. Determining whether a person is a proper subject for treatment under Wis. Stat. § 51.20(1)(a)1. often hinges on the court's interpretation of the statutory definition of "treatment" set out in Wis. Stat. § 51.01(17). "Treatment" is defined as techniques that are designed to rehabilitate the individual, and so to aid courts in future interpretation, reviewing courts have fashioned broad rules of applicability as to what the word "rehabilitation" means within the context of § 51.01(17). *See, e.g.*, *Matter of Athans*, 107 Wis. 2d 331, 335–36, 320 N.W.2d 30 (Ct. App.

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[4] *See also United States v. Loughner*, 672 F.3d 731, 770 (9th Cir. 2012) (applying the clearly erroneous standard to the circuit court's finding that there was a "substantial probability" the defendant could be restored to competence under 18 U.S.C. § 4241(d)(2).).

1982) (holding that "the term rehabilitation may not be statutorily construed to include habilitation."). The appellate courts are thus better positioned to answer the "proper subject for treatment" question because the circuit court does not have an advantage in interpreting statutory text, and only the appellate court can set general rules of applicability by establishing precedent. The same is not necessarily true of the issue of whether the defendant is likely to regain competency. The competency issue does not require the court to answer abstract statutory interpretation questions such as "what does the word 'rehabilitation' mean in the context of § 51.01(17)?" but is instead a highly individualized, fact-specific issue that asks the court to predict whether the defendant is likely to achieve competency—which is itself a fundamentally factual standard subject to clearly erroneous review.

T.R.T. also suggests that while the circuit court is at an advantage in deciding whether the defendant is competent, it holds no advantage over the appellate court when it comes to deciding whether the defendant is likely to regain competence with treatment. (T.R.T.'s Br. 14–15.) His argument appears to rely on the assumption that the circuit court is bound to follow a particular expert's judgment regarding whether a defendant is likely to regain competency in the future with treatment. (T.R.T.'s Br. 14–15.) But given that the competency decision is a judicial, rather than a medical determination, a court is "not required to accept the testimony of experts." *Smith*, 367 Wis. 2d 483, ¶ 55. This holds true regardless of whether the court is evaluating the defendant's contemporaneous competency or potential for competency in the future. Just as with the contemporaneous competency decision, the expert's opinion is one piece of information to be weighed against other pieces of information—other expert opinions, witness testimony, and the past and current behavior of the defendant—in determining whether the

defendant is likely to become competent within the statutory time period. And just like with the competency decision, the court is in the best position to evaluate witness and defendant credibility and demeanor when it is deciding whether the defendant is likely to become competent with treatment. *See Byrge*, 237 Wis. 2d 197, ¶ 44.

Witness testimony and the court's observations as to the behavior and demeanor of the defendant are just as relevant to the future competency decision as they are to the contemporaneous competency decision. For instance, a court's observations of past lucidity (or lack thereof) from the defendant might speak to whether the defendant's impairment is permanent or transient, given that "[c]ompetency is not static." *State v. Daniel*, 2015 WI 44, ¶ 49, 362 Wis. 2d 74, 862 N.W.2d 867. Because the circuit court is weighing the same kinds of information in making both the contemporaneous competency and future competency decision, it is difficult to see why it would have an advantage over the reviewing court in making the former decision but not the latter. This Court should apply a consistent standard of review for both decisions.

C. Regardless of what standard of review is used, the evidence supports the circuit court's decision that T.R.T. was likely to regain competency with treatment.

Regardless of whether this Court reviews the circuit court's decision under the clearly erroneous standard or as a mixed question of law and fact, the evidence supports the circuit court's decision that T.R.T. was likely to regain competency within the statutory timeframe with treatment. This Court should affirm.

The circuit court based its opinion on the following factual findings, which under either standard of review

should be upheld unless clearly erroneous. *See In re Melanie L.*, 2013 WI 67, ¶ 38, 349 Wis. 2d 148, 833 N.W.2d 607.

- T.R.T. suffers from schizoaffective disorder, neurocognitive disorder, and PTSD. (R. 86:14, 18; 114:11–12.)
- Schizoaffective disorder and PTSD are treatable, which can enable people with these disorders to function effectively. (R. 110:76, 80; 114:16–17.)
- T.R.T.'s mental issues that lead to his incompetency are attributable in part to his treatable mental disorders. (R. 86:18–19; 114:17.)
- Jail staff observed more or less "normal" behavior from T.R.T. over the past two years. Specifically, T.R.T. had been able to interact with staff and other inmates, could follow jail rules with few problems, had the capacity to make and follow up on requests with jail staff, and was able to "carr[y] on a normal conversation, responding . . . and returning questions." (R. 102:63–67, 69; 114:9, 16.) Dr. Borra also testified that, according to other jail and nursing staff, T.R.T. was able to communicate with them and get his needs met with no observable problems. (R. 102:19–23; 114:9, 16.)
- Because T.R.T.'s impairment stems at least in part from treatable mental disorders, T.R.T. can benefit from treatment. (R. 114:17.) Dr. Benson's opinion to the contrary—that T.R.T.'s cognitive impairment is so profound and permanent as to inhibit treatment—is inconsistent with T.R.T's observed behavior in jail and the contribution of treatable disorders to his mental state. (R. 114:16.)

None of these findings are clearly erroneous. The fact that T.R.T.'s mental issues inhibiting competency are attributable in significant part to his schizoaffective disorder can be derived from Dr. Benson's report, where he specifically attributed T.R.T.'s incompetency and cognitive deficits to both his schizoaffective disorder and his neurocognitive disorder. (R. 86:18–19.) The fact that schizoaffective disorder and PTSD are treatable can be derived from Dr. Benson's cross-examination testimony. (R. 110:76, 80.) The observations of T.R.T.'s normal functioning in jail in the recent past can be derived from the testimony of Sergeant Evers and Dr. Borra. (R. 102:19–23, 63–67.) And the circuit court's finding that Dr. Benson's opinion was inconsistent with the above evidence was not clearly erroneous. Dr. Benson's opinion rested on the proposition that T.R.T.'s profound and permanent cognitive impairments prevented him from benefiting from treatment. (R. 86:19.) However, evidence that T.R.T. had in the recent past been able to carry on normal conversations and advocate for himself suggests that T.R.T.'s cognitive impairments may not be as profound and permanent as Dr. Benson may have believed, and that he may in fact have the mental capacity to benefit from treatment.

Based on these findings, the court found that T.R.T. was likely to attain competency with treatment. Because there was evidence that T.R.T.'s competency issues were attributable in significant part to treatable disorders, and because T.R.T. had some capacity in the recent past to interact lucidly with others, suggesting that he was perhaps not a permanent "lost cause" cognitively speaking, treatment for those disorders was likely to bring him to competency. The circuit court's logic was sound and rooted in the evidence presented to it. Evidence of cognitive or intellectual impairment, even significant impairment, is in and of itself generally insufficient to support a finding of incompetency. *See Garfoot*, 207 Wis. 2d at 226; *see also People v. Jackson*, 91

Ill. App. 3d 595, 600–02, 604, 414 N.E.2d 1175 (App. Ct. 1980) (defendant was competent despite score of 51 on an IQ test). So too is cognitive impairment alone insufficient to support a finding that a defendant is unlikely to regain competency with treatment, particularly given that T.R.T.'s impairment was at least somewhat attributable to treatable disorders, and that evidence of his recent lucidity suggested that his underlying cognitive impairment may be somewhat transient, or at least not as permanently debilitating as it appeared during his examination.

T.R.T.'s arguments to the contrary seem to rest on two flawed assumptions. The first is that the circuit court was required to accept Dr. Benson's opinion that T.R.T. would not benefit from treatment for his schizoaffective disorder and PTSD due to his neurocognitive disorder. (T.R.T.'s Br. 16–17.) This ignores that the competency inquiry is fundamentally a judicial one, rather than a medical one, and that circuit courts are not required to follow an expert's opinion when making relevant factual findings. *Smith*, 367 Wis. 2d 483, ¶ 55. In other words, the circuit court was entitled to consider Dr. Benson's observations along with the other evidence presented and come to a different conclusion as to whether T.R.T. could benefit from treatment. The circuit court reasonably found that because T.R.T.'s impairment stems at least in part from treatable issues, treating those issues would have a positive impact on his mental health and functioning. (R. 114:16–17.) This factual finding was not clearly erroneous.

Second, T.R.T. seems to assume that the testimony and reports from jail staff are only relevant to the issue of whether T.R.T. was malingering or had a mental illness at all. (T.R.T.'s Br. 18–19.) But evidence as to T.R.T.'s recent behavior is just as relevant to the question of whether T.R.T. is likely to regain competency within the statutory timeframe with treatment. In a general sense, T.R.T.'s ability to clearly

communicate and pursue certain personal objectives speaks to his capacity to understand and engage with treatment. And his recent behaviors are somewhat inconsistent with his expert's restorability opinion, which was premised on the idea that his cognitive impairment was too profound and permanent for him to benefit from treatment. Perhaps T.R.T.'s jail interactions would be less relevant if T.R.T. were contending that his impairment stems from an incident that took place after the interactions. But Dr. Benson's restorability opinion was premised on cognitive deficiencies stemming from T.R.T.'s past inhalant abuse, which occurred (and apparently ended) years prior to his being jailed. (R. 86:7, 19.) As such, evidence of T.R.T.'s recent behavior is relevant to show that, past inhalant abuse notwithstanding, T.R.T. still has a certain level of communicative and cognitive ability that would allow him to benefit from treatment for his schizoaffective disorder and PTSD.

Taking a step back, the reason that T.R.T.'s competency is at issue at all is that there is probable cause to believe that he has committed very serious crimes, including repeated sexual assault of a child as a persistent repeater. (R. 113:1.) The State has a recognized interest in bringing T.R.T. to competency so that he may be tried for those crimes. *State v. Green*, 2022 WI 30, ¶ 17, 401 Wis. 2d 542, 973 N.W.2d 770. The circuit court here heard evidence that T.R.T.'s mental issues stemmed at least in part from treatable mental disorders, and that T.R.T. had recently been able to interact normally with inmates, jail staff, and nursing staff in the past, including advocating for himself in order to get his needs met. Regardless of the appropriate standard of review, the circuit court was correct that based on its findings, T.R.T. was likely to regain competency within a year with treatment.

CONCLUSION

This Court should affirm the circuit court's order of commitment for treatment.

Dated this 12th day of May 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 4,430 words.

Dated this 12th day of May 2025.

Electronically signed by:

Kathleen E. Wood
KATHLEEN E. WOOD
Assistant Attorney General

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 12th day of May 2025.

Electronically signed by:

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