STATE OF WISCONSIN

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

DISTRICT I

Case No. 2025AP437-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

T. A. W.,

Defendant-Appellant.

APPEAL FROM AN ORDER FOR INVOLUNTARY MEDICATION TO RESTORE THE DEFENDANT TO COMPETENCY, ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE MARK A. SANDERS, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

JOSHUA L. KAUL
Attorney General of Wisconsin

MICHAEL J. CONWAY
Assistant Attorney General
State Bar #1134356

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-8910
(608) 294-2907 (Fax)
conwaymj@doj.state.wi.us

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutions

Statutes

INTRODUCTION

T.A.W. appeals an order of involuntary medication after being charged with resisting arrest, causing substantial bodily harm or soft tissue injury, and retail theft. While resisting arrest, he caused an officer to suffer abrasions and nearly seized a taser from that officer's holster.

T.A.W. argues primarily that the State did not satisfy its burden of establishing an important interest in prosecuting him. The circuit court did not err. The State has a substantial interest in prosecuting T.A.W. for a Class H felony in which he injured a police officer during a routine and recurring police officer task. The prosecution also serves to vindicate the injured officer's constitutional rights as a victim. The circuit court considered whether special circumstances lessened the State's interest and correctly recognized that they did not. Most notably, there is no evidence that T.A.W. is eligible for a civil commitment, and he is a 40-year-old repeat offender.

T.A.W. briefly argues that the individualized treatment plan is deficient because it does not provide the maximum dosages. This argument need not be addressed due to its lack of development. It also ignores a dispositive fact. The record clearly establishes that T.A.W. would take one medication once a day at bedtime.

ISSUE PRESENTED

Did the circuit court properly order involuntary medication to restore T.A.W. to competency?

The circuit court answered: Yes.

This Court should answer: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication. This case can be resolved by applying well-established law to the facts, which the parties' briefs have adequately set forth.

STATEMENT OF THE CASE

Police officers detained T.A.W. because he matched the description of a retail theft suspect. (R. 2:1.) Officer D.S.[1] attempted to handcuff T.A.W., but T.A.W. tensed his muscles and tried to break free. (R. 2:1.) The officers responded by pulling T.A.W. to the ground. (R. 2:1–2.) On the ground, T.A.W. kicked and grasped at the taser in Officer D.S.'s holster. (R. 2:2.) The officers eventually placed T.A.W. in handcuffs. (R. 2:2.) Officer D.S. "sustained numerous abrasions to his hands and knees" in the process of arresting T.A.W. (R. 2:2.) The State charged T.A.W. with resisting an officer, causing substantial bodily harm or soft tissue injury, and retail theft. (R. 2:1.)

This was not T.A.W.'s first run-in with law enforcement. His criminal record dates back to 2001 when he was an adolescent. (R. 16:3; 27:2.) He has been incarcerated in Wisconsin four times. (R. 27:3.) On two of those occasions, he engaged in misconduct that led him to be subject to maximum security restrictions. (R. 27:3.) He was 40 years old at the time of the offense. (R. 2:1.)

At the initial appearance before a preliminary hearing occurred, the circuit court ordered T.A.W.'s competence evaluated pursuant to Wis. Stat. § 971.14. (R. 4.) After an evaluation and a hearing, the circuit court found T.A.W.

---

[1] The State uses the initials of this officer because he is statutorily defined as a crime victim. Wis. Stat. § (Rule) 809.86(3).

incompetent and committed him for treatment because he was likely to become competent within the statutory time frame if treated. (R. 12; 34:2.) The commitment order took effect on August 13, 2024. (R. 12:2.)

T.A.W. remained in jail while awaiting placement at a medical facility. (R. 28:13.) However, he began receiving treatment while in jail. A behavioral specialist attempted to meet with him twice in late August 2024, but T.A.W. refused to engage with the specialist. (R. 16:4–5.) On September 9, 2024, T.A.W. met with psychiatry staff at the jail. (R. 16:5; 27:3.) The staff observed symptoms of "psychosis, including delusions, and thought disorganization." (R. 16:5; 27:3.) The staff suggested to T.A.W. that he take aripiprazole, an antipsychotic medication, and T.A.W. initially agreed. (R. 16:5; 27:3.) However, T.A.W. almost never took it over the next two months. (R. 16:5; 27:3.) Consequently, his delusional state remained unabated. (R. 16:5.) Another psychiatrist evaluated T.A.W. in jail in early November. (R. 16:2–3; 27:3.) Again, T.A.W. was acutely psychotic and suffered delusions. (R. 16:3, 6; 27:3–4.) The psychiatrist diagnosed T.A.W. with unspecified schizophrenia spectrum and other psychotic disorder. (R. 16:5; 27:4.) Finally, in December 2024, a guard requested that a member of the jail's psychiatrist staff meet with T.A.W. due to his "acute symptoms of psychosis," but T.A.W. refused to cooperate. (R. 27:4.)

T.A.W. was admitted to Sand Ridge Secure Treatment Center (Sand Ridge) on December 18, 2024. (R. 30:5.) Dr. Andrew Kordus met with T.A.W. that same day. (R. 30:5.) He informed T.A.W. that he was prescribing him Risperdal but that he was presently free to refuse it. (R. 30:5.) T.A.W. refused all doses. (R. 30:5.)

Dr. Kordus met with T.A.W. again on January 3. (R. 30:5–6.) T.A.W. was "profoundly disorganized" and exhibited "prominent delusions." (R. 30:6.) Consequently, he was unable to discuss the advantages and disadvantages of

medication. (R. 30:6.) Dr. Kordus agreed with the initial diagnosis of T.A.W. as unspecified schizophrenia spectrum or other psychotic disorder but added that T.A.W. had a likely diagnosis of schizophrenia. (R. 30:6.) Dr. Kordus determined that only medication would alleviate T.A.W.'s psychotic symptoms stemming from his mental illness. (R. 30:7.)

Dr. Kordus reviewed T.A.W.'s medical history. (R. 19:2; 30:12.) He learned that T.A.W. had struggled with emotional and behavioral problems stemming from his untreated mental illness since adolescence. (R. 27:2.) He also learned that T.A.W. had been successfully treated with a 6-milligram dose of Risperdal in 2010. (R. 19:2; 30:12.)

In light of his evaluations of T.A.W., Dr. Kordus submitted a request for an order involuntarily medicating T.A.W. (R. 19:1.) He included an individualized treatment plan providing for three medications. (R. 19:4.) He initially wanted to try Risperdal, starting at the minimum effective daily dose of 2 milligrams and increasing the dose if needed for efficacy to a maximum dose of 8 milligrams. (R. 30:8.) If Risperdal were ineffective or resulted in an intolerable side effect, Dr. Kordus would try Haldol as an alternative. (R. 30:9–10.) He would begin Haldol at a 5-milligram dose and increase if needed for efficacy up to a maximum dose of 40 milligrams. (R. 30:10.) Dr. Kordus's third medication, Olanzapine, was another alternative if neither Risperdal nor Haldol worked. (R. 30:11.) He would begin T.A.W. with a dose of 10 milligrams and increase to a maximum dose of 30 milligrams if necessary for efficacy. (R. 30:11.) For all of these medications, Dr. Kordus planned for T.A.W. to take a single daily dose in the evening "at bedtime." (R. 19:2, 5; 30:8, 11, 13.) Dr. Kordus intended to "use the lowest effective doses of medications necessary." (R. 19:5.)

The circuit court held a hearing on the involuntary medication request at which Dr. Kordus testified. The circuit court found Dr. Kordus credible and accepted his testimony. (R. 30:28.) The circuit court concluded that the State satisfied its burden on the second, third, and fourth *Sell*[2] factors. (R. 30:46.) It opted to take more time to reflect on the first *Sell* factor in light of this Court's decision in *State v. J.D.B.*, 2024 WI App 61, 414 Wis. 2d 108, 13 N.W.3d 525.[3]

Three days later, the circuit court ordered involuntary medication because it concluded that the State satisfied its burden on the first *Sell* factor to establish an important governmental interest in the prosecution. (R. 28:15–16.) It observed that T.A.W. was charged with a single Class H felony related to assaulting a police officer, just like the defendant in *J.D.B.* (R. 28:5.) It determined that J.D.B.'s offense involved more violence than T.A.W.'s alleged offense, but nevertheless determined that the offenses were equally serious because T.A.W. both wounded Officer D.S. and attempted to seize his taser. (R. 28:5–11.) In fact, the circuit court explained that T.A.W.'s conduct came very close to satisfying the elements of attempting to disarm a police officer under Wis. Stat. § 941.21. (R. 28:10.) The circuit court also recognized that the State has an interest in prosecuting someone who resists arrest to formally condemn such conduct. (R. 28:9.) At the prior hearing, the circuit court recognized that Officer D.S. was a victim and, thus, entitled to the rights under Marsy's Law. (R. 30:43.)

---

[2] *Sell v. United States*, 539 U.S. 166 (2003).

[3] The Wisconsin Supreme Court accepted the State's petition for review in *J.D.B.* on February 12, 2025. *See State v. J. D. B. Appeal Number 2023AP715-CR*, Wis. Ct. & Ct. App. Access, https://wscca.wicourts.gov/caseDetails.do?caseNo=2023AP000715&cacheId=567B91CAEAE46EBF961450F52FB9D44B&recordCount=1&offset=0 (Choose "Case History") (last visited Apr 9, 2025).

The circuit court concluded that special circumstances did not eliminate the State's interest. It had no information from which to conclude that T.A.W. could be civilly committed in the future. (R. 28:11–12.) T.A.W.'s lack of bail and time spent in pre-treatment custody did not defeat the State's interest because T.A.W. was a 40-year-old repeat offender who had grabbed at Officer D.S.'s taser. (R. 28:14–15.) The circuit court then formally rendered its conclusion that the State satisfied its burden on the second, third, and fourth *Sell* factors. (R. 28:16–19.) Accordingly, it ordered involuntary medication. (R. 28:19.)

T.A.W. appealed. Prior to briefing, this Court granted his motion to stay the involuntary medication order for this appeal. T.A.W.'s commitment expires on August 13, 2025, which will require the end of involuntary medication.

STANDARD OF REVIEW

Sell does not specify the standard for reviewing involuntary medication orders. *State v. Green*, 2021 WI App 18, ¶ 18, 396 Wis. 2d 658, 957 N.W.2d 583, *review granted*, 2022 WI 88, ¶ 18, *and aff'd in part*, 2022 WI 30, ¶ 18, 401 Wis. 2d 542, 973 N.W.2d 770. However, "[t]he majority of [federal] circuits that have considered the issue concluded that the first *Sell* factor (whether important governmental interests are at stake) is a legal question subject to *de novo* review, while the last three *Sell* factors present factual questions subject to clear error review." *United States v. Diaz*, 630 F.3d 1314, 1330 (11th Cir. 2011) (collecting cases).

Regardless of whether one or all of the *Sell* factors are ultimately conclusions of law, any underlying factual findings made by the circuit court to support its ruling are reviewed for clear error. *See Matter of D.K.*, 2020 WI 8, ¶ 18, 390 Wis. 2d 50, 937 N.W.2d 901.

ARGUMENT

This Court should affirm the involuntary medication order.

T.A.W. argues primarily that the involuntary medication order should be reversed because the State failed to satisfy the first *Sell* factor. He also argues briefly that the State did not satisfy factors two or four. These arguments lack merit, and this Court should affirm.

A. The Four *Sell* Factors

A defendant who is incompetent to stand trial may be subject to an involuntary medication order to be restored to competency. *See Sell*, 539 U.S. 166. Due process requires that a trial court may issue such an order only if it makes four specific findings or conclusions. *Id*. at 178–81. Those findings or conclusions pertain to: (1) an important governmental interest; (2) involuntary medication furthering that interest; (3) the necessity of medication; and (4) the medical appropriateness of the medication. *Id*. at 180–81. "The State is required to prove the factual components of each of the four factors by clear and convincing evidence." *Green*, 396 Wis. 2d 658, ¶ 16.

"An individualized treatment plan is the necessary first step to fulfilling the second, third, and fourth *Sell* requirements." *Green*, 396 Wis. 2d 658, ¶ 37. This treatment plan must, at a minimum, identify

> (1) the specific medication or range of medications that the treating physicians are permitted to use in their treatment of the defendant, (2) the maximum dosages that may be administered, and (3) the duration of time that involuntary treatment of the defendant may continue before the treating physicians are required to report back to the court.

Id. ¶ 38. In addition, "the court must consider the individualized treatment plan as applied to the particular defendant" and in light of the relevant circumstances, such as the defendant's history with psychotropic drugs and the defendant's medical record. *Id.*

B. The State satisfied the first *Sell* factor by establishing an important interest in prosecuting T.A.W. for injuring a police officer.

The first *Sell* factor requires an important governmental interest in the prosecution. "The Government's interest in bringing to trial an individual accused of a serious crime is important." *Sell*, 539 U.S. at 180. It does not matter whether it is "a serious crime against the person or a serious crime against property." *Id.* "In both instances the Government seeks to protect through application of the criminal law the basic human need for security." *Id.* This analysis is case-specific. *Id.* "Special circumstances may lessen the importance of" the government's interest. *J.D.B.*, 414 Wis. 2d 108, ¶ 37 (quoting *Sell*, 539 U.S. at 180). The circuit court correctly concluded that the State has an important interest in prosecuting T.A.W.

T.A.W.'s felony charge is a serious offense. T.A.W.'s charge of resisting arrest, causing a soft tissue injury to an officer, is a Class H felony carrying a maximum prison term of six years. (R. 2:1.) It implicates an important and recurring part of a police officer's job—taking individuals into custody. It is not only a violent offense against a person, but also an offense against the State's authority to police criminal conduct and, thus, "the basic human need for security." *Sell*, 539 U.S. at 180. The State's interest in prosecuting such offenses compounds the State's already important interest in prosecuting similar altercations between private citizens. For that reason, the circuit court correctly recognized that the State has a significant interest in ensuring that police officers

take people into custody peacefully by using criminal punishment to deter those who refuse like T.A.W. (R. 28:9–10.)

The particular circumstances of T.A.W.'s charged offense heightened its seriousness. T.A.W.'s violence was continuous, as he resisted the handcuffs while standing and kicked at the officers when moved to the ground. (R. 2:1.) He caused abrasions to Officer D.S.'s hands and knees. (R. 2:2.) While on the ground, he attempted to remove the taser from Officer D.S.'s holster. (R. 2:2.) The circuit court reasonably determined that these facts, considered collectively, constitute a serious offense. (R. 28:10–11.) Indeed, the circuit court noted that T.A.W.'s alleged conduct "comes fairly close to an allegation of attempting to disarm a police officer." (R. 28:10.) The risk posed by someone who injures a police officer while attempting to disarm him is serious. (R. 28:10.)

Officer D.S.'s interest as a victim under Marsy's Law provided further support for the seriousness of T.A.W.'s offense, which the circuit court aptly noted. (R. 30:43.) Marsy's Law constitutionally enshrines several rights for crime victims that "vest at the time of victimization." Wis. Const. art. I § 9m(2). Crime victims have the rights to "be treated with dignity, respect, courtesy, sensitivity, and fairness. . . . full restitution, . . . [and] compensation as provided by law." Wis. Const. art. I § 9m(2)(a), (m), (n). Moreover, "Marsy's law guarantees that these rights will be 'protected by law in a manner no less vigorous than the protections afforded the accused.'" *State v. Johnson*, 2023 WI 39, ¶ 44, 407 Wis. 2d 195, 990 N.W.2d 174 (quoting Wis. Const. art. I § 9m(2)).

Treating T.A.W.'s charge as a nonserious offense runs contrary to Officer D.S.'s constitutionally protected interests as a victim. Categorically classifying T.A.W.'s alleged conduct as nonserious effectively deems the injuries Officer D.S. sustained in the line of duty nonserious, which hardly affords

Officer D.S. dignity and respect. Wis. Const. art. I § 9m(2)(a). Vacating the involuntary medication order based on *Sell* factor one would also preclude Officer D.S. from ever obtaining restitution or compensation for his injuries to which he is constitutionally entitled. Wis. Const. art. I § 9m(2)(m)–(n). Restitution arises only from "crimes considered at sentencing," which are either crimes of conviction or read-in crimes. Wis. Stat. § 973.20(1g)(a). T.A.W. will never proceed to sentencing for any crimes and, thus, will never be liable to provide Officer D.S. restitution unless he becomes competent through medication that he refuses to take voluntarily. Involuntary medication is the only means to vindicate Officer D.S.'s rights under Marsy's Law. The circuit court appropriately recognized that the constitutionally protected interests of the victim lend further weight to the seriousness of T.A.W.'s charged offense. (R. 30:43.)

The circuit court thoroughly explained why special circumstances did not lessen the State's interest in light of this Court's decision in *J.D.B.* It noted that both J.D.B. and T.A.W. were denied a bail hearing and had a similar length of delay between commitment and placement in a mental health facility, which were two "special circumstances" in *J.D.B.* (R. 28:14–15); *see J.D.B.*, 414 Wis. 2d 108, ¶ 53. The circuit court accepted that they lessened the State's interest, but not enough to be dispositive when compared to "the injury to the officer combined with the allegation relating to the taser." (R. 28:15.) The circuit court also noted that these two special circumstances were not dispositive in *J.D.B.*, either. Rather, *J.D.B.* also featured a "significant potential" for a Chapter 51 commitment and concerned a 19-year-old first-time offender. *J.D.B.*, 414 Wis. 2d 108, ¶¶ 41, 53. Here, in contrast, the circuit court found no evidence to support a Chapter 51 commitment and observed that T.A.W. is a 40-year-old repeat offender. (R. 28:12, 15.) The circuit court, thus, correctly evaluated the totality of the circumstances and reasonably

determined that special circumstances did not eliminate the State's interest in prosecution. (R. 28:16.)

T.A.W.'s case has another distinction with *J.D.B.* that the circuit court did not mention. Even though he had a similar length of delay between the commitment order in August 2024 and his arrival in Sand Ridge in December, he actually started receiving psychiatric treatment almost immediately while in jail. That immediate provision of treatment satisfied *J.D.B.*'s statement that "the constitution demands that an incompetent defendant's continued detention for competency restoration . . . be justified by progress toward that goal." *J.D.B.*, 414 Wis. 2d 108, ¶ 51.

The record provides clear evidence that T.A.W. made progress toward competency restoration while in jail. A behavioral specialist attempted to meet with T.A.W. in late August, but T.A.W. refused to meet. (R. 16:4–5.) Psychiatry staff at the jail observed throughout September and October that he exhibited symptoms of psychosis. (R. 16:5; 27:3.) They even talked to T.A.W. about taking an antipsychotic medication, aripiprazole, and he initially agreed to take it, although he did not follow through. (R. 16:5; 27:3.) A psychiatrist visited T.A.W. in jail in early November and diagnosed him with unspecified schizophrenia spectrum and other psychotic disorder. (R. 16:5; 27:3–4.) Jail psychiatry staff continued to try to work with T.A.W. in December. (R. 27:4.) These efforts all informed Dr. Kordus's evaluation of T.A.W. and his proposed treatment. (R. 19:2.) Indeed, he made the same diagnosis of unspecified schizophrenia spectrum and other psychotic disorder as the psychiatrist who evaluated T.A.W. in November. (R. 30:6.) In sum, while T.A.W. had to wait for a placement at Sand Ridge, he did not have to wait for treatment following the commitment order, further distinguishing his case from *J.D.B.*

T.A.W. maintains that his offense is not serious. (T.A.W.'s Br. 16–19.) For one, he considers his charge not serious because it is graded as a Class H felony. (T.A.W.'s Br. 16.) While he is correct that he is charged with only one Class H felony, that is hardly evidence of a lack of seriousness. If convicted, he faces a maximum prison sentence of six years. Wis. Stat. § 939.50(3)(h). It is not even the lowest-graded felony, which is Class I. Wis. Stat. § 939.50(1)(i). More fundamentally, myopically focusing on the gradation of his felony ignores the underlying facts of the alleged criminal conduct, which were critical to the circuit court's conclusion that the State satisfied the first *Sell* factor. (R. 28:9–11.)

T.A.W.'s argument relies substantially on the fact that his charged offense is not defined as a "serious crime" or "serious felony" in other, unrelated state statutes. (T.A.W.'s Br. 15–16.) *J.D.B.* recognized that "*Sell* explicitly prohibits analyzing this [first] factor in such a categorical fashion," *J.D.B.*, 414 Wis. 2d 108, ¶ 37, although it found that, as a starting point, "battery to a law enforcement officer is a 'serious crime' for purposes of *Sell*," *id.* ¶ 36. The circuit court correctly declined to use a categorical approach and considered the totality of the circumstances. (R. 28:5–11.)

The absurd result of T.A.W.'s statutory-definition argument reveals the perils of relying solely on those definitions. Based on Wis. Stat. § 941.29(1g), T.A.W. asserts that he did not commit a violent offense. (T.A.W.'s Br. 16.) For starters, T.A.W. is wrong because that definition applies only to § 941.29 by its own terms. Wis. Stat. § 941.29(1g) ("In this section:"). T.A.W. also misstates the question under *Sell*'s first factor. The question is not whether T.A.W.'s offense was "violent" but whether it was "serious" within the meaning of *Sell*, which means that it implicates an important state interest under the totality of the circumstances. *See Sell*, 539 U.S. at 180. T.A.W. incorrectly assumes that "violent" is a substitute for "serious" in *Sell*. In any event, no reasonable

person would describe T.A.W.'s alleged criminal conduct as non-violent, much less non-serious. He initiated a fracas, kicked at officers, attempted to seize an officer's taser, and caused injuries to Officer D.S. (R. 2:1–2.)

T.A.W. nevertheless insists that this Court must defer to the legislature, which requires accepting his nonsensical conception of non-violence. (T.A.W.'s Br. 16–17.) Again, this Court cannot defer to the state legislature (or even Congress) as to the meaning of the U.S. Supreme Court's words in *Sell*. The only entity to which this Court defers on such questions in the Wisconsin Supreme Court.

Regardless of the impropriety of T.A.W.'s proposed approach, T.A.W.'s argument is flawed as a matter of first principles. Statutes should be interpreted "to avoid absurd or unreasonable results." *State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110. T.A.W. has not attempted to explain why Wis. Stat. § 941.29(1g) provides the legislature's exclusive conception of violence and, thus, compelled the absurd conclusion that he has been charged with a non-violent offense. Nor could he. As noted, the statute itself limits its definitions to the relevant section. Wis. Stat. § 941.29(1g). Even if that were not the case, section 941.29 identifies classes of people barred from possessing firearms. The term "violent felony" is material only to whether a mandatory minimum term of initial confinement applies. Wis. Stat. § 941.29(4m)(a)1. The legislature did not need to exhaustively catalogue violent felonies, because the statute disarms *all felons*, including T.A.W. if he is convicted of his charge. Wis. Stat. § 941.29(1m)(a). Moreover, even if the legislature sought to broadly define "violent" for the entire criminal code—and again, its contrary intent is explicit—that definition would still have to yield to Officer D.S.'s constitutionally protected right as a crime victim to "dignity, respect, courtesy, sensitivity, and fairness." Wis. Const. art. I § 9m(2)(a); *see Interest of M.L.J.N.L.*, 2024 WI App 11, ¶ 10,

411 Wis. 2d 174, 4 N.W.3d 633 ("If a statute conflicts with a constitutional provision, 'the constitutional [provision] prevails over the inconsistent statute.'" (alteration in original) (citation omitted)). Accordingly, T.A.W. has provided no basis to conclude that the legislature considers conduct that injures a police officer to be neither violent nor serious.

T.A.W. argues that his crime is not serious because he allegedly engaged in less serious violence than the defendant in *J.D.B.* (T.A.W.'s Br. 17.) The circuit court acknowledged that difference but explained that T.A.W.'s specific conduct, which arguably amounted to an attempt to disarm an officer, put his charged offense on equally serious footing. (R. 28:10.) T.A.W. acknowledges that reasoning and, notably, does not fault it. (T.A.W.'s Br. 17.) Rather, he argues that the circuit court could not rely on the allegations in the criminal complaint for that information. (T.A.W.'s Br. 17.) He claims that the State had to call the officer to testify to these facts in order for the circuit court to rely on them. (T.A.W.'s Br. 17.) This argument is meritless.

If a circuit court intends to commit a defendant for a competency examination under Wis. Stat. § 971.14 prior to the preliminary hearing, it must "[find] that it is probable that the defendant committed the offense charged." Wis. Stat. § 971.14(1r)(c). The statute expressly authorizes the circuit court to consider the complaint in making that finding. *Id.* The defendant may submit "an affidavit alleging with particularity that the averments of the complaint are materially false." *Id.* Moreover, the rules of evidence do not apply to proceedings under Wis. Stat. § 971.14(1r)(c). Wis. Stat. § 911.01(4)(c).

Because the circuit court committed T.A.W. for a competency evaluation at the initial appearance before a preliminary hearing, it necessarily found probable cause of his charged offense, as required by Wis. Stat. § 971.14(1r)(c). It was allowed to consider the criminal complaint and was not

bound by the rules of evidence. Wis. Stat. §§ 911.01(4)(c); 971.14(1r)(c). T.A.W. had an opportunity to object to any facts in the complaint by submitting a sworn affidavit. Wis. Stat. § 971.14(1r)(c). He evidently did not. Accordingly, the circuit court made an unchallenged probable cause finding based on the allegations in the criminal complaint. Having done so, the circuit court properly relied on those allegations when considering the seriousness of T.A.W.'s charged offense. The complaint is in the record, and a court may take judicial notice of items in its own docket. *See Chris Schroeder & Sons Co. v. Lincoln Cty.*, 244 Wis. 178, 182, 11 N.W.2d 665 (1943). Nothing in *Sell* or Wisconsin law requires a *de facto* preliminary hearing at the hearing on involuntary medication.

Finally, T.A.W. argues that special circumstances defeat the State's interest in prosecution like they did in *J.D.B.* (T.A.W.'s Br. 18–19.) Like in *J.D.B.*, T.A.W. cites his lack of a bail hearing and the length of time between the commitment order and his placement at Sand Ridge. (T.A.W.'s Br. 18.) As discussed previously, the circuit court correctly recognized that those special circumstances did not eliminate the State's interest in prosecuting T.A.W., and T.A.W. actually received psychiatric treatment in jail while awaiting placement.

T.A.W. adds that his nine months in custody constitute a special circumstance. (T.A.W.'s Br. 18–19.) In T.A.W.'s case, that time is not a special circumstance. *Sell* considered "the possibility that the defendant has already been confined for a significant amount of time" to be relevant to the first factor. *Sell*, 539 U.S. at 180. Nine months is not a significant period of time in the context of T.A.W.'s case. If convicted, T.A.W. faces a maximum prison sentence of six years. Wis. Stat. § 939.50(3)(h). His commitment is capped by statute at one year, Wis. Stat. § 971.14(5)(a)1. It will expire on August 13, 2025. (R. 12:2.) He received 44 days of credit for his pre-

commitment custody. (R. 12:2.) Thus, T.A.W. is not at serious risk of being committed for "significant amount of time" compared to his legal jeopardy.

For these reasons, the circuit court correctly concluded that the State satisfied its burden on *Sell* factor one.

C. T.A.W.'s argument regarding the second and fourth *Sell* factors is fatally undeveloped and meritless.

T.A.W. argues in a single paragraph that the individualized treatment plan does not satisfy *Sell*'s second or fourth factors. (T.A.W.'s Br. 19–20.) This bare paragraph does not develop a meaningful argument. This Court should therefore decline to address it. *See State v. Pettit*, 171 Wis. 2d 627, 646–47, 492 N.W.2d 633 (Ct. App. 1992) (declining to address undeveloped arguments).

T.A.W.'s bare claim would fail because it relies on an erroneous factual premise. He claims that the individualized treatment plan does not identify the "maximum dosages that may be administered on a per day, per week, or per month basis." (T.A.W.'s Br. 20.) He is incorrect. Dr. Kordus stated several times at the hearing that T.A.W. would take either of the three proposed medications "at bedtime." (R. 30:8, 11, 13.) He put that intention in writing in the individualized treatment plan, too. (R. 19:2, 5.) The record could not be clearer that Dr. Kordus proposed a treatment plan that would require T.A.W. to take the proposed dose once a day in the evening—capping the daily dosage at one, the weekly dosages at seven, and the monthly dosages at however many days fall within that month. If T.A.W. did not understand this point, Dr. Kordus "was available to testify on that topic." *State v. D.E.C.*, 2025 WI App 9, ¶ 76, 415 Wis. 2d 161, 17 N.W.3d 67. By declining to do cross-examine him as to this alleged deficiency in the treatment plan, T.A.W. forfeited any claim

that this clear record was somehow not specific enough. *See id.* ¶¶ 75–76.

CONCLUSION

This Court should affirm the order of involuntary medication.

Dated: April 17, 2025

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Michael J. Conway
MICHAEL J. CONWAY
Assistant Attorney General
State Bar #1134356

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-8910
(608) 294-2907 (Fax)
conwaymj@doj.state.wi.us

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 4773 words.

Dated: April 17, 2025

Electronically signed by:

Michael J. Conway
MICHAEL J. CONWAY
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: April 17, 2025

Electronically signed by:

Michael J. Conway
MICHAEL J. CONWAY
Assistant Attorney General