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**SUPREME COURT**

STATE OF WISCONSIN  
IN SUPREME COURT

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Case No. 2025AP437-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

T.A.W.,

Defendant-Appellant-Petitioner.

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**RESPONSE TO PETITION FOR REVIEW**

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## ARGUMENT

The State of Wisconsin opposes T.A.W.'s petition for review of *State v. T.A.W.*, No. 2025AP437-CR, 2025 WL 1565100 (Wis. Ct. App. June 3, 2025) (unpublished) (Pet-App. 3–14). He argues that the court of appeals erred in affirming the order for involuntary medication to restore him to competency to stand trial. (T.A.W.'s Pet. 12–16.) He contends that the State did not satisfy the first of the four factors that serve as preconditions to involuntary medication under *Sell v. United States*, 539 U.S. 166 (2003). Under the first factor, the State must prove that the government has an important interest in the prosecution. *Id.* at 180.

This Court's "primary function is that of law defining and law development." *Cook v. Cook*, 208 Wis. 2d 166, 188–89, 560 N.W.2d 246 (1997). Review is not granted "merely to correct error or to examine alleged error." *Vollmer v. Luety*, 156 Wis. 2d 1, 14, 456 N.W.2d 797 (1990). Rather, this Court grants review when "the alleged error in issue has some substantial significance in [its] institutional law-making responsibility as set forth in the statute and constitution and as reflected in [this Court's] rules for accepting cases on petition for review." *Id.* (footnote omitted); see Wis. Stat. § (Rule) 809.62(1r).

This Court should deny T.A.W.'s petition for review because it does not provide an opportunity for law development. T.A.W. argues only that the court of appeals misapplied *State v. J.D.B.*, 2024 WI App 61, 414 Wis. 2d 108, 13 N.W.3d 525. (T.A.W.'s Pet. 14–16.) However, this Court already accepted review of *J.D.B.*<sup>1</sup> This Court's review of

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<sup>1</sup> *State v. J. D. B. Appeal Number 2023AP715-CR*, Wis. Ct. & Ct. App. Access, <https://wscca.wicourts.gov/caseDetails.do?caseNo=2023AP000715&cacheId=A2F11FC2A68F3005B94201286C6D2B76&recordCount=1&offset=0> (Choose "Case History") (last visited July 14, 2025).

*J.D.B.* will suffice for the purpose of law development on *Sell* factor one. Moreover, this Court's decision in *J.D.B.* may render T.A.W.'s arguments meaningless.

It would also be inappropriate for this Court to hold the case in abeyance pending a decision in *J.D.B.* The order for T.A.W.'s commitment expires on August 13, 2025. *T.A.W.*, 2025 WL 1565100, ¶ 11 n.6. After that point, the involuntary medication must cease, rendering this appeal moot. *See State v. D.E.C.*, 2025 WI App 9, ¶ 1 n.1, 415 Wis. 2d 161, 17 N.W.3d 67, *rev. denied*, unpublished orders, Nos. 2024AP1789-CR & 2024AP1799-CR (Apr. 10, 2025). This Court will not even hold oral argument in *J.D.B.* before August 13, let alone issue an opinion before then. T.A.W. does not address the impending mootness of his appeal, nor does he argue that a mootness exception should apply. Accordingly, this Court should simply deny the petition rather than hold it in abeyance.

One aspect of T.A.W.'s argument bears highlighting because it leads to absurd results. T.A.W. is charged with resisting an officer, causing substantial bodily harm or soft tissue injury, for allegedly kicking a police officer while held on the ground. (R. 2:1–2.) While on the ground, T.A.W. also attempted to remove the officer's taser from its holster. (R. 2:2.) Despite this conduct, T.A.W. insists that the State lacks an important interest in prosecuting him because his offense is “non-violent.” (T.A.W.'s Pet. 5, 16; *see also* T.A.W.'s Pet. 4, 14.) He makes this puzzling assertion solely because his charged offense is not listed as a “violent” offense in Wis. Stat. § 941.29(1g)(a)–(b). (T.A.W.'s Pet. 4.) Section 941.29, however, classifies offenses as violent for the purpose of determining whether a mandatory minimum sentence of initial confinement applies to someone convicted for unlawfully possessing a firearm. Wis. Stat. § 941.29(4m). T.A.W. does not explain why involuntary medication is limited to people being prosecuted for offenses that are violent for the purpose of this mandatory minimum.

T.A.W.'s argument illustrates the folly of reducing *Sell* factor one to a search through the Wisconsin Statutes for any provision that might classify the charged offense as “serious” or “violent” in a context separate from involuntary medication. In *J.D.B.*, this Court should be wary of adopting a methodology for *Sell* factor one that would compel the absurd result for which T.A.W. presently advocates. Indeed, it would be a disservice to the Legislature to presume that the Legislature, in fashioning a mandatory minimum term of confinement for certain people convicted of unlawfully possessing a firearm, enacted a law that definitively determined that kicking a police officer is “non-violent.”

### CONCLUSION

This Court should deny T.A.W.'s petition for review.

Dated this 14th day of July 2025.

Respectfully submitted,

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Electronically signed by:

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### **FORM AND LENGTH CERTIFICATION**

I hereby certify that this petition or response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition or response produced with a proportional serif font. The length of this petition or response is 733 words.

Dated this 14th day of July 2025.

Electronically signed by:

Michael J. Conway  
MICHAEL J. CONWAY

### **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 14th day of July 2025.

Electronically signed by:

Michael J. Conway  
MICHAEL J. CONWAY