STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 2

STATE OF WISCONSIN, Respondent	)	
Plaintiff Appellee	)	
vs.	)	Appeal No. 2024AP002013 - CR
	)	Case No. 2022CM000780
STEPHEN LODWICK ,	)	**Oral Argument Requested**
Defendant./Appellant	)	

PRO SE INITIAL BRIEF OF APPELLANT

Stephen Lodwick, *pro se*
N86W18329 Main St,
Menomonee Falls, WI 53051

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Statement of the Case

On or about August 29, 2022, the State filed a criminal complaint alleging Battery and Domestic Abuse against Appellant. On June 12, 2023, Appellant was tried by a jury. During trial, the State amended the Complaint to include *Criminal Damage to Property*. The Appellant was found *not guilty* of Battery – Domestic Violence and the Criminal Damage to Property amendment. Appellant was found guilty only of Disorderly Conduct. The modifier for domestic violence remained, despite the *not guilty* on the Battery – Domestic Violence count. On July 18, 2023, Appellant was sentenced to a term of probation, with a period of county jail time incorporated if Appellant failed to successfully complete probation. On August 14, 2023, a Restitution Hearing was had, where the alleged victim was awarded over $5,000.00, as "damages". Appellant successfully completed the probation and in a hearing on June 6, 2024, the circuit court entered a civil judgment for the alleged victim. [1] Appellant then filed "Notice of Motion and Motion with attached Defendant's Motion for Order Granting New Trial" on September 6, 2024, which the circuit court denied any relief based on procedural grounds. Appellant then filed his "Defendant's Motion for Reconsideration" on September 23, 2024, which was denied on October 3, 2024. On October 4, 2024, Appellant filed his timely *Notice of Appeal* and this appeal follows.

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[1] 06-04-2024 Probation review hearing Giernoth, Sandra J. Balkowski, Lisa
Additional text:
clerk: HF. Prosecuting attorney Grant D Scaife in court for the State of Wisconsin. Defendant Stephen P Lodwick in court. Hereon request to extend probation due to unpaid financial obligations. Court questions def. Def states he did retain counsel and requests an adjournment. Court notes open civil matter pending in Br.1. Def states he was unaware that there were court costs due separate from restitution owed. Court takes judicial notice of 22CV543 and orders probation extended for 1 year or until court obligations $1,113.51 paid whichever comes first; Civil judgment shall be entered as to unpaid restitution amount.

Statement of Facts

Relevant Background

Stephen Lodwick was charged with Battery / Domestic Abuse, Disorderly Conduct / Domestic Abuse and Criminal Damage to Property. After a jury trial, he stood convicted of the Disorderly Conduct with the modifier for Domestic Abuse and acquitted of the remainder.

During the sentencing phase, Jennifer Behn represented herself and presented a plethora of documents in the court room, not before, seeking about $120,000 in restitution. The Court opined as follows: "Restitution At hearing held 8-14-23, Court orders defendant pay restitution in the amount of $5705.12 plus the 10% surcharge, during the term of probation. If probation is revoked or will discharge with outstanding financial obligations due, a civil judgment shall be entered for the balance due." Mr. Lodwick was also sentenced to 12 months probation beginning 7-18-2023. "If probation is revoked or will discharge with outstanding financial obligations due, a civil judgment shall be entered for the balance due."

Appellant's probation term was successfully terminated and the circuit court entered a civil judgment on behalf of the alleged victim exceeding $5,000.00.

Issue #1 **THE CIRCUIT COURT ERRED IN NARROWLY DEFINING THE TERM *IN CUSTODY* FOR PURPOSES OF *MENTZEL* DENIAL OF MOTIONS FILED BY APPELLANT**

Appellant contends that this, in relevant part, is a case of first impression, as this Court may expand the teachings of *State v. Mentzel, 218 Wis. 2d 734, 581 N.W. 2d 581.* Into a more contemporary and defining moment.

Section 974.06(1), STATS., provides:

> After the time for appeal or postconviction remedy provided in s. 974.02 has expired, *a prisoner in custody under sentence of a court* or a person convicted and placed with a volunteers in probation program under s. 973.11 claiming the right to be released upon the ground that the sentence was imposed in violation of the U.S. constitution or the constitution or laws of this state, that the court was without jurisdiction to impose such

> sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence. [Emphasis added.]

Because the precise meaning of the term "sentence" as used in § 974.06, STATS., is not defined by that statute and because case law has not addressed the meaning of the term in this context, we agree with the parties that the statute is ambiguous. As such, we are permitted to look beyond the plain language of the statute. See P.A.K., 119 Wis. 2d at 878, 350 N.W.2d at 681-82.

We begin with the legislative history. Section 974.06, STATS., was created by Laws of 1969, ch. 255, § 63 and became effective July 1, 1970. The note following the proposed statute states: "This represents the first Wisconsin attempt at a comprehensive post-conviction statute which will afford an all encompassing remedy for defendants challenging their convictions." Legislative Council Note, 1969, § 974.06, STATS. The effect of the trial court's literal interpretation of the term "sentence" in this case would be to exclude that category of probationers whose sentences have been withheld. Such an interpretation would run contrary to the intent of the legislature to create a "comprehensive" and "all encompassing" remedy for those defendants who wish to challenge their convictions. As Prue teaches, we are to give the term "sentence" a broader meaning when "there are strong indications the term was used in a general sense." Prue, 63 Wis. 2d at 116, 216 N.W.2d at 46.

In Appellant's case, he was given a probationary period extension after serving his initial term of probation, for a like term of one year, or until his financial obligations were paid first. The Appellant seems to have paid the costs sometime shortly thereafter and the Circuit Court failed to specifically identify when the extension of probation was no longer applicable, in the record before us. Further, the Circuit Court entered a civil judgment upon Appellant in excess of $5,000.00, as

restitution, predicated upon the trial and sentencing phase of the underlying case. That judgment, despite sufficient indicia of fraud and deception upon the Circuit Court by the alleged "victim", remains to, along with the looming threat of enforcement by the alleged "victim" and Appellant losing real or personal property without recourse before the judge that imposed same. The collateral consequences of this civil judgment, without any avenue for relief, is tantamount to a denial of Due Process.

The panel in *Mentzel*, admitted that the 974.06 statute is ambiguous. Narrowly interpreting a statute in such a manner as to deny a defendant any reasonable recourse, defies public policy and the spirit of our judicial system. Indeed, Appellant labors under a component of the initial sentence, which was subsequently transposed to a civil judgment. It is that component and transformation, that continues to permit Appellant the relief he sought in the Circuit Court in his original Motion and for Reconsideration.

It is reasonable for this Court, at first blush, to read *in custody* for Appellant's case here, to include laboring under the sentence component of "restitution", even when it was given civil status and accompanying civil enforcement.

It is abundantly clear, from Appellant's filings, that the damning evidence against the alleged "victim" was shrouded in a cloak of secrecy and unavailable for use in a §974.06 motion during Appellant's brief probationary term, by design of the "victim's" counsel in civil proceedings. Had Appellant brought the evidence of fraud and deception upon the Circuit Court in the criminal action, he would have faced severe implications from the "victim's" defense counsel for disclosure without permission. In essence, the alleged "victim" in this case, unjustly benefitted from the *Non-Disclosure Agreement* drafted by her civil attorneys, which precluded the Appellant from disclosing the truth to the criminal judge, until her attorneys openly admitted

during a 2024 hearing, that the alleged "victim" did not receive an injury at the hands of the Appellant, but suffered from Arthrosis in the shoulder she testified to during trial, was severely damaged by the Appellant.

The result of the restitution imposed on Appellant, without benefit of comprehensive proceedings and hearing in the criminal case, is apparent. The alleged "victim" will argue at any enforcement proceeding, that Appellant failed to challenge the restitution in the criminal case and should be estopped during judgment enforcement proceedings. Such an argument may well succeed.

In Appellant's case here, the trial judge never directed the State to respond, but took the avenue to decision, alone. *Mentzel*, while dated and limited in scope, deserves revisiting and refinement in several respects, including Appellant's instance where he labors under an unjust and fraudulent restitution award.

Issue #2 THE CIRCUIT COURT ERRED IN NOT HOLDING A HEARING ON DEFENDANT/APPELLANT'S MOTION FOR NEW TRIAL

To be entitled to a hearing on a postconviction motion, the defendant must allege "sufficient material facts that, if true, would entitle the defendant to relief." State v. Allen, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. If the motion does allege sufficient facts, a hearing is required. Id. If the motion is insufficient, if it presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court may exercise its discretion in deciding whether to grant a hearing. Id. State v. VALOE, Appeal No. 2011AP1992, 2011AP1993 (Wis. Ct. App. Nov. 20, 2012).

In this case, Appellant did not seek a direct appeal from the tial and sentencing. (see State v. REMMEL, No. 2004AP2506 (Wis. Ct. App. Aug. 9, 2005).

Remmel's motion was made pursuant to WIS. STAT. § 974.06, which has no time limit.[3] Rather, the only limit on § 974.06 motions is that they may not be used to review issues that were or could have been litigated on direct appeal. State v. Escalona-Naranjo, 185 Wis. 2d 168, 172, 517 N.W.2d 157 (1994). This bar does not apply to Remmel because he never pursued a direct appeal nor had he previously filed a § 974.06 motion. Therefore, we conclude the court erred by denying Remmel's motion as untimely.

Instead of addressing the grave evidence presented to the circuit court in Appellant's *Motion for New Trial*, (**Appendice A**), the trial court evaded confronting the contrary evidence by stating:

> To pursue postconviction relief under section 974.06, the movant must be serving a sentence imposed by the Court. Section 974.06(1) states, in relevant part, as follows: "[a]fter the time for appeal or postconviction remedy provided ins. 974.02 has expired, a prisoner in custody under sentence of a court or a person convicted and placed with volunteers in probation program ... may move the court which imposed the sentence to vacate, set aside, or correct the sentence." This statute has been interpreted by the Wisconsin Court of Appeals to permit a defendant who is either in custody serving a sentence or on probation to advance a postconviction motion under section 974.06. State v. Mentzel, 218 Wis.2d 734, 743-44, 581 N.W.2d 581, 584 (Ct. App. 1998.)
>
> Because Mr. Lodwick is neither in custody serving a sentence nor serving a probationary term, either at present or at the time his motion was filed on August 14, 2024, he lacks standing to bring these motions.

The circuit court held a strict interpretation of *in custody*, citing *Mentzel* above, but the appellate courts have ruled that the term *in custody* carries more than the boilerplate or myopic reading. For example, in State v. Brissette, 601 NW 2d 678 - Wis: Court of Appeals 1999, the appellate court held:

> We conclude that the phrase "in custody" in § 980.04(2), STATS., could be interpreted by reasonable minds in more than one way and is therefore ambiguous. See State v. Mentzel,

218 Wis. 2d 734, 738, 581 N.W.2d 581, 582 (Ct. App. 1998). We thus look to the purpose of the statute to ascertain its meaning. See id.

Further on June 4, 2024, during a "Probation Review Hearing", the circuit court extended Appellant's probation for a period of one year or until July 18, 2025. [2] On June 5, 2024, the circuit court entered two Orders, which included extending Appellant's probation and a Restitution Order and judgment against Appellant. On August 14, 2024, Appellant filed his *Motion for a New Trial*, Appendice "A", and the circuit court summarily denied that Motion. (see **Appendice B**)

The record in the circuit court fails to indicate when the circuit court terminated the extended probation and more importantly, notified Appellant that he no longer lived under the rigors of supervision or probation.

The civil judgment entered by the circuit court was docketed and remains for relevant purposes of this appeal.

As a component of Appellant's sentence, the circuit court imposed a substantial amount of "restitution" and even considered extending Defendant's supervision for payment of the monetary component, but later converted the "restitution" to a **civil** judgment.

806.07 Relief from judgment or order.

(1) On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15 (3);

(c) Fraud, misrepresentation, or other misconduct of an adverse party;

(d) The judgment is void;

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[2] 06-04-2024 Probation review hearing Giernoth, Sandra J. Balkowski, Lisa
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(e) The judgment has been satisfied, released or discharged;
(f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
(g) It is no longer equitable that the judgment should have prospective application; or
(h) Any other reasons justifying relief from the operation of the judgment.

(2) The motion shall be made within a reasonable time, and, if based on sub. (1) (a) or (c), not more than one year after the judgment was entered or the order or stipulation was made. A motion based on sub. (1) (b) shall be made within the time provided in s. 805.16. A motion under this section does not affect the finality of a judgment or suspend its operation. This section does not limit the power of a court to entertain an independent action to relieve a party from judgment, order, or proceeding, or to set aside a judgment for fraud on the court.

In 2014, the Court of Appeals opined that §974.06 was the appropriate avenue for relief from a restitution judgment and held:

> In reviewing Jones's postconviction motion and the motion for reconsideration that followed, "[f]irst, we determine whether the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief. This is a question of law that we review *de novo*. If the motion raises such facts, the circuit court must hold an evidentiary hearing."[7] *See State v. Allen*, 2004 WI 106, ¶¶9, 27, 274 Wis. 2d 568, 576, 682 N.W.2d 433, 437, 443 (citation omitted).
>
> ¶11 In Jones's submissions, he alleges errors related to the restitution determination that was made. He explains that he only first learned of the restitution order in 2002 and promptly filed a motion challenging it. He did not, however, receive a copy of the postconviction court's order denying his 2002 motion. Jones assumed that the court had disregarded his 2002 motion as moot because when he requested a copy of the restitution order, he was informed by the records office that there was not one in his file. It was not until 2014, when he received a financial obligation form indicating that he owed restitution, that he realized the issue still existed. At that point, he filed the motion that led to this appeal.
>
> ¶12 Based on the foregoing, we conclude that Jones has set forth sufficient reasons for failing to challenge the restitution order earlier. *See* WIS. STAT. § 974.06(4). Accordingly, the postconviction court erred when it concluded Jones's motion was procedurally barred.

(*State v. Jones*, Appeal No. 2014AP1501 (Wis. Ct. App. Dec. 9, 2014).

Appendice "A" is fraught with sworn testimony and conclusive evidence of fraud and deception regarding the trial and restitution judgment. It should be noted that the circuit court maintained more than a casual link between testimony from the trial and that heard during the restitution hearing.

In sum, the trial court erred in not directing the State to respond and hold a hearing on the judgment entered under fraudulent and materially false testimony.

Issue #3 **THE CIRCUIT COURT ERRED IN FAILING TO GRANT RELIEF SOUGHT BY DEFENDANT/APPELLANT**

Issue #4 **THE CIRCUIT COURT ERRED IN ALLOWING THE JUDGMENT ENTERED AGAINST DEFENDANT/APPEALANT PREDICATED ON FRAUD, PERJURY AND/OR MATERIALLY FALSE EVIDENCE OR TESTIMONY OF ALLEGED VICTIM**

The flagrant testimony by Jennifer Behn, the alleged "victim" in Appellant's case, which was designed to materially mislead the jury and the judge, relating to alleged *injuries* she supposedly sustained during an argument with Appellant, are clearly set forth in **Appendice "A"**.

While it is arguable that the jury disregarded her testimony in finding Appellant not guilty of the battery, domestic violence and damage to property, it is clear that the trial judge employed that false testimony when crafting a sentence which included restitution exceeding $5,000.00, which was intended to be paid during the probation period also imposed. The "medical bills"

which was attributed to Appellant for payment, along with "lost wages" by Jennifer Behn and even the fraudulent Invoice including Krystle Weber, all was foisted on Appellant in restitution.

In fulfilling the terms of the probation statute, the trial court should be given some degree of flexibility in its administration. The meaning of the word "restitution" in the statute has not been previously construed by this court. Decisions of other jurisdictions are of little help. They are based on different statutory language. *Karrell v. United States* (9th Cir. 1950), 181 Fed. (2d) 981, and *United States v. Stoehr* (3d Cir. 1952), 196 Fed. (2d) 276, cited in the briefs are based on a federal statute which limits restitution to "actual damages or loss caused by the offense for which conviction was had." 18 USCA, Suspension of Sentence Probation, p. 406, sec. 3651. *People v. Funk* (1921), 117 Misc. 778, 193 N. Y. Supp. 302, involved a statute which provided the court may order the defendant "to make restitution . . . to the aggrieved parties in an amount to be fixed by the court, not to exceed the actual losses or damages caused by his offense." There are other cases construing statutes requiring restitution for damages caused by a crime as a condition for probation. Many of these cases hold that the damages must be directly caused by the acts for which the defendant was convicted, and the amount of restitution must be reasonable. See *State v. Barnett* (1939), 110 Vt. 221, 3 Atl. (2d) 521; *People v. Becker* (1957), 349 Mich. 476, 84 N. W. (2d) 833; *People v, Prell* (1939), 299 Ill. App. 130, 19 N. E. (2d) 637. (see 9 Wis. 2d 418, 101 NW 2d 77 - Wis: Supreme Court, 1960).

The black-letter law which prohibits restitution based upon fraud or deception, is well-deserved and with Constitutional intent. By imposing probation and the restitution as an elemental component, Appellant was sufficiently *in custody* for §974.06 relief.

Issue #5 **THE CIRCUIT COURT ERRED IN NOT STRIKING THE DOMESTIC ABUSE MODIFIER ON THE SIMPLE DISORDERLY CONDUCT ALLEGATION**

The trial court erred in not giving an Instruction to the jury prior to deliberations, where the jury was permitted to opt for Disorderly Conduct without any domestic violence modifier.

The jury found Appellant not guilty of any violent conduct relating to the alleged "victim" within minutes. [3] Clearly, the jury failed to believe the allegations of violence, including the freshly added charge of Criminal Damage to Property brought by the State during the trial. The trial court, however, failed to provide similar findings by the jury, by providing a distinctly different selection on the Verdict Form, which negated the modifier for domestic violence.

Wisconsin's disorderly conduct statute provides:

Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

Wis. Stat. § 947.01(1). Under this language, a person is guilty of this misdemeanor if: (1) the defendant engaged "in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct," (2) under circumstances that tend "to cause or provoke a

[3] 06-12-2023 Jury trial
Jurors excused for deliberations at 5:20pm. Recess. Reconvene w/jury present. Verdict reached - jury finds def not guilty on Ct 1; guilty on Ct 2; not guilty on Ct 3. No request for jurors to be individually polled. Jurors thanked and released at 5:50pm.

disturbance." Id.; see also State v. Breitzman, 2017 WI 100, ¶57, 378 Wis. 2d 431, 904 N.W.2d 93.

The key interpretive question is whether "violent" and "boisterous" conduct, for example, are simply alternative factual circumstances that satisfy one of the two elements of disorderly conduct, or whether violent disorderly conduct is a different crime than boisterous disorderly conduct. Resting on a plain reading of the statute, we conclude Wisconsin's disorderly conduct statute is indivisible, and enumerates different means of committing the same crime. The language of Wis. Stat. § 947.01(1) is most naturally read as creating a single crime of disorderly conduct, while listing alternative means to satisfy its first element. The focus of the list is any type of conduct that is disorderly. This is particularly seen by the inclusion of a general catchall term at the end: "violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct." § 947.01(1) (emphasis added). This phrasing suggests the first six types of conduct listed are examples of conduct that qualify as disorderly, not alternative elements establishing distinct crimes. Were it otherwise, the statute would create a crime of "otherwise disorderly conduct"—a crime that would not make much sense since it would necessarily include the six types of conduct that come before. Nothing in the grammar or structure of the list separates the listed behaviors in a way that would suggest it codifies seven different crimes. The most straightforward understanding of § 947.01(1)'s text is that it provides a non-exhaustive list of means by which the single crime of disorderly conduct may be committed.

This understanding of the statute is in harmony with how it has long been interpreted. Our cases have consistently described disorderly conduct as having "two elements"—the "first element being that the defendants engaged in disorderly conduct, and the second element being that such conduct tended to cause or provoke a disturbance." State v. Zwicker, 41 Wis. 2d 497, 514, 164

N.W.2d 512 (1969); see also Breitzman, 378 Wis. 2d 431, ¶57, 904 N.W.2d 93. It would be a marked departure to read § 947.01(1) as creating seven different crimes.

The jury instructions are in accord. They describe disorderly conduct as a single "offense" with "two elements." Wis. JI—Criminal 1900, at 1 (2018). An included note likewise describes the various types of conduct as means to prove a single offense: "The Committee recommends selecting one of the terms [from the list] where possible, but believes it is proper to instruct on all alternatives that are supported by the evidence." Id. at 4. Nowhere do the jury instructions suggest there are seven separate disorderly conduct crimes, or that each version may be charged separately.(see (see Doubek v. Kaul, 973 NW 2d 756, 2022 WI 31, 401 Wis. 2d 575 - Wis: Supreme Court, 2022)

Appellate courts have essentially defined Disorderly Conduct consisting of two distinct characteristics, but with the dissimilar penalty where a defendant faces two years of supervision, in lieu of one year.

968.075 Domestic abuse incidents

(1) Definitions. In this section:

(a) "Domestic abuse" means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.

2. Intentional impairment of physical condition.

3. A violation of s. 940.225 (1), (2) or (3).

4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

Wisconsin Pattern Jury Instruction 1900 reads as follows:

1900 DISORDERLY CONDUCT — § 947.01

Statutory Definition of the Crime

Disorderly conduct, as defined in § 947.01 of the Criminal Code of Wisconsin, is committed by a person who, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant engaged in (violent) (abusive) (indecent) (profane) (boisterous) (unreasonably loud) (or otherwise disorderly) conduct.[1]

2. The conduct of the defendant, under the circumstances as they then existed, tended to cause or provoke a disturbance.

Meaning of "Disorderly Conduct"

"Disorderly conduct" may include physical acts, or language, or both.[2]

[The general phrase "otherwise disorderly conduct" means conduct having a tendency to disrupt good order and provoke a disturbance.[3] It includes all acts and conduct as are of a nature to corrupt the public morals or to outrage the sense of public decency, whether committed by words or acts. Conduct is disorderly although it may not be violent, abusive, indecent, profane, boisterous, or unreasonably loud if it is of a type which tends to disrupt good order and provoke a disturbance.][4]

The principle upon which this offense is based is that in an organized society a person should not unreasonably offend others in the community.[5] This does not mean that all conduct that tends to disturb another is disorderly conduct. Only conduct that unreasonably offends the sense of decency or propriety of the community is included. It does not include conduct that is generally tolerated by the community at large, but that might disturb an oversensitive person.

Meaning of "Tend to Cause or Provoke a Disturbance"

It is not necessary that an actual disturbance must have resulted from the defendant's conduct. The law requires only that the conduct be of a type that tends to cause or provoke a disturbance under the circumstances as they then existed.[6] You must consider not only the nature of the conduct but also the circumstances surrounding that conduct. What is proper under one set of circumstances may be improper under other circumstances. This

element requires that the conduct of the defendant, under the circumstances as they then existed, tended to cause or provoke a disturbance.

Instruction 1900 permitted Appellant's jury to find him guilty of the generic Disorderly Conduct. The trial judge never made the requisite findings as to Appellant's actual conduct that permitted any imposition of the modifier. The trial court followed in the vein of the jury's not guilty determination of Battery/Domestic Violence, but simply held that the Appellant then faced enhanced punishment.

The trial court erroneously applied the modifier, obviating the function of the jury, as the trier of fact.

Issue #6 THE CIRCUIT COURT ERRED IN FAILURE TO PERMIT EXPUNGEMENT FOR APPELLANT

973.015 Special disposition.
(1m)
(a) 1. Subject to subd. 2. and except as provided in subd. 3., when a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition. This subsection does not apply to information maintained by the department of transportation regarding a conviction that is required to be included in a record kept under s. 343.23 (2) (a).
2. The court shall order at the time of sentencing that the record be expunged upon successful completion of the sentence if the offense was a violation of s. 942.08 (2) (b), (c), or (d) or (3), and the person was under the age of 18 when he or she committed it.
3. No court may order that a record of a conviction for any of the following be expunged:

a. A Class H felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in s. 301.048 (2) (bm), or is a violation of s. 940.32, 948.03 (2), (3), or (5) (a) 1., 2., 3., or 4., or 948.095.
b. A Class I felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) (a).
(b) A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation. Upon successful completion of the sentence the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record. If the person has been imprisoned, the detaining authority shall also forward a copy of the certificate of discharge to the department.

The trial court, during the "Probation Review Hearing" of June 4, 2024, failed to Order the Disorderly Conduct conviction in Appellant's case, be expunged, as part of the probation extension as set forth in the record. [4] According to the statutory provisions, the Department of Corrections Certificate of Discharge, triggers an otherwise automatic expungement.

In Appellant's case, the trial court erred in not granting any expungement for Appellant, due to a variety of reasons. (see Appendice)

CONCLUSION

For the reasons stated above, the judgment of the Circuit Court must be REVERSED and this matter be remanded for proceedings consistent with §974.06. Further, for this Court to vacate the civil judgment or direct the trial court to direct the State to respond and then hold a hearing as

[4] Court notes open civil matter pending in Br.1. Def states he was unaware that there were court costs due separate from restitution owed. Court takes judicial notice of 22CV543 and orders probation extended for 1 year or until court obligations $1,113.51 paid whichever comes first; Civil judgment shall be entered as to unpaid restitution amount.

to the amount of fraudulent or materially false testimony by Jennifer Behn any award of restitution whatsoever. In the alternative, for any relief deemed just and equitable to which Appellant is entitled to as a matter of law or right.

Dated this 13th day of December, 2024.

By: S. Lodwick

Stephen Lodwick, *pro se*
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Menomonee Falls, WI 53051

Word Count: 35,498

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 2

STATE OF WISCONSIN,	)	
Plaintiff Appellee	)	
vs.	)	Appeal No. 2024AP002013 - CR
	)	Case No. 2022CM000780
STEPHEN LODWICK ,	)	**Oral Argument Requested**
Defendant./Appellant	)	

_____/

CERTIFICATE OF SERVICE

I, STEPHEN LODWICK hereby certify that I have served true and accurate copies of this "INFORMAL INITIAL BRIEF" and APPENDIX upon the parties, by placing same in the United States mail, with postage fully prepaid, on 12-13-, 2024, addressed to:

Mark D. Bensen
Washington County Justice Center
484 Rolfs Avenue
West Bend, WI 53095

Dated this 13th day of December, 2024.

By: S. Lodwick
STEPHEN LODWICK