No. 2023AP874-CR

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,
Plaintiff-Respondent,

vs.

JOAN L. STETZER,
Defendant-Appellant.

Appeal from the Circuit Court for Waukesha County
The Honorable Judge Paul Bugenhagen, Jr. Presiding
Case No. 2017CM1014

BRIEF OF DEFENDANT-APPELLANT, JOAN L. STETZER

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Did the trial court err as a matter of law when it relieved the State of its burden to prove beyond a reasonable doubt that Joan Stetzer was not acting lawfully under the defense of coercion?

(This action was a trial to the court and as such the court's determination was made in its findings of fact and law)

ORAL ARGUMENT AND PUBLICATION

Joan Stetzer welcomes oral argument. Publication is not warranted as the law is clear that when the affirmative defense of coercion is properly before the fact-finder, the State holds the burden to prove beyond a reasonable doubt that the defendant was not acting lawfully under the defense of coercion. In this action the trial court (acting as fact-finder), erred in placing the burden of proof upon Joan Stetzer to prove that she was not acting lawfully under the defense of coercion and therefore summary reversal is mandated.

SUMMARY ARGUMENT

The facts of this case are largely undisputed. Joan Stetzer is a battered spouse. On the evening of May 24, 2017, Joan, as had happened many times prior, was physically attacked by her husband. Immediately prior to Joan escaping from her home she had been assaulted by her husband and thrown down a stairwell causing great injury. Within 10 minutes of escaping, Joan was arrested for drunk driving. Joan explained to the officer what had just happened to her and described her injuries and need for medical care but police spoke with her husband who lied to them about what happened and Joan ended up with a Disorderly

Conduct charge as well.[1]

The State ultimately concluded that Joan's husband lied to police about the events of May 24, 2017 and dismissed the Disorderly Conduct charge against Joan. The State also agreed that Joan met the threshold of evidence required for the affirmative defense of coercion under Wis. Stat. § 939.46 to apply at trial. At trial Joan did not dispute that she was impaired when she operated her vehicle on May 24, 2017, and did not dispute that her PAC was .113. Joan's defense was that she was coerced to escape her home due to her husband's assault upon her.

At trial Joan presented expert testimony on domestic violence and battered woman syndrome. The expert testified as to the ways in which a person who has been subjected to domestic violence responds differently than the stereotypical reasonable person. (R. 125, 90:19-91:6; A-App. 17-18). The expert offered the opinion that "based on the data presented in this case, it is reasonable to conclude that Joan's decision to operate a vehicle having consumed alcohol was impacted by her fear of continued abuse by her intimate partner." (R. 14 at 20, A-App. 103).

Joan's husband testified at trial and admitted that on May 24, 2017, he yelled, screamed, pushed, and shoved Joan resulting in her fall down a stairwell; grabbed a heavy metal cooking pot and threw it at Joan; chased Joan into the garage; chased Joan around their truck; struck the windows of the truck and yelled at Joan to "get the fuck out of here," and didn't stop banging on the windows until she drove away. (R. 125, 198:19-205:17; A-App. 22-29). He also admitted that he had been physically and psychologically violent towards Joan at least 15 times prior to May 24,

[1] Prior to May 24, 2017, police had likewise believed the husband's lies and had previously arrested Joan when she reported to police that her husband had beat her.

2017 and lied to the police about what happened on May 24, 2017, and had lied to police about other incidents of abuse in the past. (R. 125, 206:19-209:3; A-App. 30-33).

The trial court found Joan guilty on the following bases;

> "Of much importance in my consideration, the law doesn't ask me to determine if her actions were reasonable."
>
> (R. 57, 171:24-172:1; A-App. 4-5); and,
>
> "Since her actions once she's out of that driveway and driving was not the only means of preventing great bodily harm, I find that the defenses beyond a reasonable doubt not available.
>
> (R. 57, 172:14-18; A-App 5).

The law does ask the fact-finder to determine if the defendant's acts were reasonable; "The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of her acts and not from the viewpoint of the jury now." (Crim JI 790). As the trial court did not consider Joan's beliefs at the time of her acts, the court relieved the State of its burden to prove "beyond a reasonable doubt that the defendant was not acting lawfully under the defense of coercion." (Crim JI 790).

This Court should Summarily Reverse and remand for a new trial.

STATEMENT OF THE CASE

I. Factual Background.

The evening of May 24, 2017 started out as a calm, normal night for Dr. Joan Stetzer. That evening, Joan was at her home in Pewaukee with her husband, Bill. (R. 57, 9:18-23). She was busy in the kitchen preparing dinner. While she was grilling, Joan had a few glasses of wine, and then another at dinner. She was not planning to drive anywhere that evening

and had no plans to go out after dinner. (R. 57, 52:10-53:1; A-App. 56-57). At some point after dinner, an argument erupted between Joan and Bill over the multitude of marital affairs that Bill had been involved in. Bill began yelling at Joan, telling her that it was her fault that she can't move on from his affairs. (R. 57, 48:16-49:25; A-App. 52-53).

Bill became irate and pushed Joan as she tried to walk away from him. He then grabbed her arm, pulled her close and got in her face and said "look, you got to move on, you know, this is your fault that you can't move on." Joan did not respond physically, but told Bill that he could not treat her that way. (R. 57, 50:1-22; A-App. 54). Bill continued to berate her, calling her a cunt, a bitch, nuts, crazy, and stupid. Eventually, Bill said "I'm getting the hell out of here," left the house, slammed the door, got into his vehicle, and took off. Joan was very upset at this point. (R. 57, 51:25-52:9; A-App. 55-56). Around 9:30 in the evening. Joan texted Bill something to the effect of "your clothes are outside on the patio, come pick them up and get out." She then went to sleep. (R. 57, 55:13-56:3; A-App. 59-60).

Shortly thereafter, Joan was startled out of sleep by the sound of the door slamming. Immediately upon returning, Bill "went berserk;" he "came in guns blazing." Bill began yelling and screaming and swearing and yelling at her "Get the fuck out of bed, go pick up my clothes, and you get the hell out of here!" Joan got up from the bed when Bill started screaming and went to the music room next to the kitchen. She told him that she was not going to pick up his clothes, that she texted him to come pick up his stuff and get out. In response, Bill started swearing at her and yelling for her to go pick up his clothes or "I'm going to take you out if you don't do it," something he said repeatedly to her that night. (R. 57,

56:1-58:10; A-App. 60-62). Joan refused. Bill, furious, began pacing around the first floor of the house. He shoved Joan a few times in the shoulder towards the door to the back patio where his clothes were. She still refused to pick up the clothes. Bill then went down into the basement. When he returned several minutes later, Joan was standing a few feet from the basement stairway in the kitchen doorway. (R. 57, 58:18-59:6; A-App. 62-63).

When Bill reached the top of the stairs, he said "Get the fuck out of my way" and walked towards the front door. Joan responded, "Look, I'm not picking up your clothes, you know, pick them up and leave or they can stay there 'til tomorrow morning, but I'm not going to go out there and get them." In response, Bill turned and moved towards her, put his left fist into his hand to create a 90-degree angle with his right arm, and body-checked Joan with his right elbow, knocking her down the basement stairs. Joan tumbled down the stairs and landed hard, hitting her head on the spindles of the railing and hurting her left shoulder, left side of her chest, her neck, and her hip. (R. 57, 59:3-60:15; A-App. 63-64). Joan laid at the bottom of the stairs for a minute. She was hurting badly enough that she "really didn't even want to get up." But she told herself "I can't lay here." All the while, Bill was screaming from the kitchen at the top of the stairs "Get up, you're going to pick up my fucking clothes!" With Bill still irate and screaming at her, Joan got up and walked up the stairs, hurting badly from the fall. (R. 57, 60:23-61:22; A-App. 64-65).

Once in the kitchen, Joan poured and drank two large glasses of wine—"it was either that or go to the emergency room, and [she] didn't want to go to the emergency room because [she] was embarrassed and humiliated." (R. 57, 61:23-62:1; A-App. 65-66). She said to Bill "I'm really

hurting," to which he responded "I don't give a fuck." Bill had his phone in his hand, but would not tell Joan who he was calling—he told her "Maybe I'll call the police on you." That didn't make sense to Joan. While Bill continued to yell, scream, and shove her, Joan told him "Look, I'm going to leave. I am just going to get out of here." She was worried that the physical violence would "escalate even further than going down a flight of stairs." (R. 57, 62:2-22; A-App. 66).

Joan, still in her pajamas, walked down the hallway towards the garage. She had no shoes on, no phone, no driver's license, nothing but her pajama t-shirt and capris. She went into the garage then opened the garage door, went outside, closed the garage door behind her, and stood there in the rain thinking to herself, "I can't leave." (R. 57, 63:1-5; A-App. 67). Joan didn't know what Bill was doing inside. She thought "I have got to go back in," because "it was just bad all the way around." She turned and went back into the garage and into the house. Bill was in the kitchen and had just hung up the phone. When Bill saw her, he said "What the hell are you doing here, get the hell out." Joan responded, "This doesn't make any sense." Bill said "No, you get the hell out." He started running at Joan with his fist closed and a look that she had never seen on his face other than that moment. As he passed the hanging pot and pan rack in the kitchen, Bill grabbed a heavy pot and continued chasing Joan. She turned, ran out into the garage, and hit the button to open the garage door. Bill threw the heavy pot at her, which barely missed her head. (R. 57, 65:12-24; 68:7-8; A-App. 69, 72).

Joan ducked under the half-open garage door and ran around the truck twice while Bill was chasing her. Worried that he was about to catch her, she got in the truck parked in the driveway facing out towards

the street and locked the doors. The keys were in the sun visor, so she started the truck. Bill was pounding on the window, yelling "I'm going to take you out, you fucking bitch." She was afraid that he was going to break the glass. (R. 57, 66:1-20; 67:18-19; A-App. 70-71). His anger was only getting worse as Bill continued pounding on the window. Just trying to escape, Joan pulled out of the driveway and turned left. (R. 57, 68:16-69:1; A-App. 72-73). At first, she didn't even know where she was going, she just knew she had to escape. (R. 57, 68:15-18; A-App. 72). Joan felt that she had no other alternative but to "get the hell out of there." She then decided she would go to their vacant lake house, where she had previously resided during periods of separation.

After making it out of the driveway, Joan believed that Bill was chasing her like he had done on previous occasions, so she kept driving. (R. 57, 70:19-71:3; A-App. 74-75). As she drove through the very rural area surrounding her house, she could see headlights behind her and assumed it was Bill following her. Joan then turned onto Highway 83, drove by a police squad car, and drove past it. She thought to herself "I should stop," then realized "No, I'm not going to stop—I have called the police on two other occasions when being physically abused. Bill lied about it, and I got arrested. They won't believe me, and then I will have to go home to this guy." (R. 57, 72:19-73:6; A-App. 76-77). She continued driving, still in a panic, only to be pulled over moments later by the squad car she passed. She reported being abused by Bill when she made contact with the officer. Instead of the officers believing her, Joan was called a liar and a narcissist. (R. 57, 75:5-76:14; A-App. 79-80).

Joan was ordered out of the car and put through filed sobriety tests and eventually arrested. She was taken to the hospital and subjected to

an evidentiary blood draw, then left to wait for hours sitting on the floor. Joan was in severe pain and felt like she was going to pass out. At one point, Joan was in such pain that she couldn't get herself up off the floor. Only then – hours after informing officers that she had been physically abused and shoved down the stairs – did Joan receive any medical treatment for her injuries. The injuries were severe enough that she needed months of physical therapy for her neck and hip. (R. 57, 77:17-79:19; A-App. 81-83).

Bill's violence towards Joan on May 24, 2017 was, unfortunately, not an isolated incident. The physical abuse started gradually but escalated in January 2015 when Joan realized that Bill had multiple affairs in previous years – one with a coworker and one with the nanny. Joan confronted Bill about the affairs and he became "aggressively violent." He started swinging at her, pushed her into the fireplace, and when she got up he threw her back down on the fireplace hearth onto her left hip. After this assault, Bill stormed out of the house and left in his truck. He did not return that night. (R. 57, 22:2-24:25; A-App. 35-36). Following this incident, Joan had ongoing hip problems and required six weeks of physical therapy. (R. 57, 34:16-35:5; A-App. 47-48).

Several months later, in March 2015, Bill did not come home and Joan suspected that he was at the lake house with the nanny, so she went out to the lake house to discuss whether he had any interest in staying in the marriage. In response, he became extremely violent and threw her down four times, causing her to hit her head. He then got in his truck and drove erratically away from the lake house. (R. 57, 28:2-17; A-App. 41).

Following that incident, in July 2015, Joan and Bill went out to dinner

as part of their efforts to reconcile. Joan brought up the affairs and the need to discuss them if they were serious about reconciliation, and Bill began yelling and cursing at her at the restaurant while the other patrons sat and stared. Joan picked up her purse and left the restaurant and started walking home, since they drove to the restaurant together. Bill began following her with his car and yelling at her to "get in the fucking car," upset that she had created a disturbance at the restaurant. Joan walked the entire 3.5 miles home. Bill followed her yelling and harassing her nearly the entire way, until a neighbor yelled at him for driving partly onto his lawn. (R. 57, 29:8-31:12; A-App. 42-44).

In August 2015, still trying to reconcile, Bill and Joan went out to the Potawatomi casino for dinner. Joan did not drink at that dinner while Bill drank quite a bit. After returning home, Joan mentioned that they had a nice evening and Bill responded "Yeah, you didn't fucking start a fight with me." Joan responded by saying that she didn't appreciate being treated that way, and Bill shoved her into a cupboard. She tried to stand to him and told him not to do that again, to which he responded "Why the hell not?" and shoved her again into an open cupboard door scratching her face. Bill left, slammed the door, and took off in his car across the road, into the ditch, and then back onto the road.

In July 2016, Joan lived at the lake house for several months due to the constant fighting with Bill. On one occasion, she stopped over at the house to pick up some clothes for work. Bill was outside mowing the lawn and asked her "Why the fuck are you here? Get out of here." He proceeded to shove her in the shoulder. She went inside the house and gathered her things and came back outside, where Bill shoved her again. She turned away from him to take her things to her car and Bill shoved

her from behind, causing her to faceplant on the driveway. (R. 57, 36:3-37:1; A-App. 49-50).

Several months later, after Joan moved back into the main house and after a marriage therapy session, Joan was sitting on the couch a foot or so from Bill watching television. Bill became upset that Joan was not looking at him while he was talking and reached over, grabbed her chin with one hand and the back of her neck with another, and forcibly spun her neck so that she was directly looking at him, twisting it approximately 90 degrees. Joan required physical therapy multiple times per week for nearly two months following this incident. (R. 57, 41:19-24; A-App. 51).

At her trial before the court, Joan presented the testimony of Dr. Darald Hanusa, a psychotherapist at the Midwest Domestic Violence Resource and a lecture emeritus at the University of Wisconsin, having taught the only course in family violence for more than 35 years at the college level. Dr. Hanusa's testimony was presented in two parts. The first part consisted of a thorough presentation on domestic violence and battered woman syndrome, with an emphasis on the ways in which a person who has been subject to domestic violence would respond differently than the stereotypical reasonable person. (R. 125, 90:19-91:6; A-App. 17-18).

According to Dr. Hanusa, "[t]he question for victims of domestic violence isn't how a reasonable person reacts in this situation. The question is given trauma that the victim of domestic violence has received, how would a reasonable violence survivor respond. That's the important question." (R. 125, 91:1-6; A-App. 17). He testified that isolation is often self-imposed by survivors to avoid embarrassment,

disbelief, or guilt: "If you're in a community where people know you, if you have a high profile job, you're not going to go to the emergency room if you're injured. You're not going to talk to friends or co-workers because it's too embarrassing. So, you don't talk to anybody." (R. 125, 93:13-19; A-App. 20). Where law enforcement intervention hasn't resulted in the abuser being held accountable, it can embolden the abuser and lead to an increase in severity, or passive-aggressiveness, or even sneakier forms of abuse: "That's our worst nightmare. Even in treatment – men have gone through treatment and not really gotten it. We hear from survivors after the fact that he's worse now than he ever was. That's our worst nightmare." (R. 125, 111:5-22; A-App. 21).

The second part of Dr. Hanusa's testimony was based on the report he prepared specifically for the case, which was based on a review of all of the discovery, six hours of interviews with Joan including several actuarial and clinical assessments, and an interview with Bill. (R. 114; A-App. 84). For example, on the Danger Assessment, an empirically tested and validated assessment to determine the risk of domestic violence homicide, Joan scored a 14, placing her in the "severe danger" range (*Id.* at 9). Joan was diagnosed with Post-Traumatic Stress Disorder and Battered Woman Syndrome. Ultimately, Dr. Hanusa opined that "based on the data presented in this case, it is reasonable to conclude that Joan's decision to operate a vehicle having consumed alcohol was impacted by her fear of continued abuse by her intimate partner." (*Id.* at 20).

Bill testified next. In describing the incident on May 24, 2017, he said "I'd never been so angry in my life." (R. 125, 205:2; A-App. 29). He described yelling and screaming at Joan to get his clothes, pushing and

shoving her, Joan falling down the stairs, and ultimately grabbing a heavy metal cooking pot and chasing Joan outside into the garage, where he threw it towards her and then chased her around the truck as she tried to get inside it. (R. 125, 198:19-205:17; A-App. 22-29). Once she got in the truck, Bill began banging on the windows and yelling at her to "get the fuck out of here," and didn't stop banging on the windows until she started pulling forward in the truck and was halfway down the driveway. (R. 125, 204:20-205:17; A-App. 28-29). Bill estimated that he had been violent towards Joan around 15 times over the course of their relationship, verbally abusive hundreds of times, psychologically abusive, used gaslighting, and had lied to the police about what happened on May 24, 2017 to try to convince the police that nothing happened. (R. 125, 206:19-209:3; A-App. 30-33).

II. Procedural History.

On May 31, 2017, the State charged Joan with OWI 2nd Offense and disorderly conduct – domestic abuse. (R. 2). On June 22, 2017, the State filed an amended criminal complaint adding Count 3, Operating with Prohibited Alcohol Concentration, noting Joan's BAC was 0.113. (R. 13; A-App. 11). At a status hearing on November 29, 2018, the State moved to dismiss the disorderly conduct – domestic abuse charge.

Joan's case was heavily litigated prior to trial. Relevant to this appeal, the trial court granted her motion to admit "other acts" evidence as to Bill's conduct (R. 70), and the parties' waiver of the right to trial by jury. (R. 125, 4:17-19). The bench trial commenced on February 11, 2022, and a second day of trial followed several months later due to delays caused by COVID on September 9, 2022.

At the conclusion of the trial, the Court gave an oral decision. The

Court, based on the stipulation of the parties, found that Joan drove with a blood alcohol concentration of 0.113, leaving the only question before the court whether the coercion defense applied. The Court did "not find that the defense applies because of the timing issue." (R. 57, 170:11-12; A-App. 3). The Court stated "I can take everything as true up to the time that Dr. Stetzer leaves the driveway. Everything that was testified to by her, by the other witnesses can be exactly true. I can take that in the light most favorable to her all the way to that point, and it is awful that she's had to go through that and found herself in that position that night. The crux of this is the defense only goes so far. It only allows that it is the only means of preventing great bodily harm to her." (R. 57, 170:12-21; A-App. 3). "Once she leaves the driveway, and I understand that she testified that she thought the lights were still behind her, she didn't drive to a police station, she didn't drive to a public area, and this is where I consider what would a reasonable person of ordinary intelligence and prudence do. Even accepting that we're accepting all the circumstances that were going on at that point that putting ourselves in her position that definitely she had to get out of there, that there was a fear of great bodily harm or death, even granting all of that, once she's out of the driveway she has more options. The driving to the lake home is not the only means of preventing harm." (R. 57, 170:22-171:9; A-App. 3-4).

The court further stated "Of much importance in my consideration, the law doesn't ask me to determine if her actions were reasonable. I could find that she was acting reasonably in trying to go to that lake. The law requires that this is the only means of prevention. It may have been reasonable for her to think well this is a safe thing for me to do because this has worked in the past, and that's where this becomes difficult on

me as a person, but I can't rule just upon my own personal beliefs." (R. 57, 171:24-172:8; A-App. 4-5). The Court then explained its understanding of the statutory defense of coercion: "The law carves out defenses. In this case it's a very specific defense, and it only provides for a violation of the law when it was the only means of preventing that great bodily harm. Since her actions once she's out of that driveway and driving was not the only means of preventing great bodily harm, I find that the defense is beyond a reasonable doubt not available." (R. 57, 172:11-18; A-App. 5). "As part of my reasoning, there has to be an end point to the defense. It's not – it would not be at all and I – Public policy was discussed a little bit in some of those other cases on appeal. Public policy wouldn't support that a person could keep on driving indefinitely, that you could get in the car and say well I have to drive to – from Wisconsin to Tennessee because I need to be so far away from the situation. So her actions were reasonable. I don't discount that. The law however provides that it has to be the only means of preventing great bodily harm or imminent death. I can't find that so that is the decision. As to Counts 1 and 3, I do find her guilty." (R. 57, 172:19-173:7; A-App. 5-6).

Joan was sentenced on November 1, 2022, and that sentence was stayed pending resolution of her appeal. This appeal now follows.

STANDARD OF REVIEW

Whether the trial court applied the correct legal standard is a question of law that is reviewed de novo. *State v. Magett*, 2014 WI 67, ¶27, 355 Wis. 2d 617, 850 N.W. 2d 42. Questions of statutory interpretation are reviewed de novo. *State v. Marks*, 2022 WI App. 20, ¶ 18, 402 Wis. 2d 285, 975 N.W. 2d 238.

ARGUMENT

A. The trial court misapplied the law by relieving the State of its burden to prove that Joan was not acting lawfully under the defense of coercion.

In Wisconsin, coercion is a statutory affirmative defense found in Wis. Stat. § 939.46(1) which reads: "A threat by a person other than the actor's coconspirator which causes the actor reasonably to believe that his or her act is the only means of preventing imminent death or great bodily harm to the actor or another and which causes him or her so to act is a defense to a prosecution for any crime based on that act, except that if the prosecution is for first-degree intentional homicide, the degree of the crime is reduced to 2nd-degree intentional homicide." Coercion is "highly analogous to the privilege of self-defense, both of which look to the reasonableness of the actor's belief that his only safe recourse is the commission of a criminal act." *State v. Amundson*, 69 Wis. 2d 554, 566-67, 230 N.W. 2d 775 (1975). These defenses recognize that the criminal conduct "is justified because it preserves or has a tendency to preserve some greater social value at the expense of a lesser one in a situation where both cannot be preserved." *State v. Brown*, 107 Wis. 2d 44, 54, 318 N.W. 2d 370 (1982) (citations omitted). "If the threats are found to have been made so as to reasonably put the actor in fear of death or bodily harm unless he commits the act, the act is privileged, if for no other reason than such reasonable fears override any other inclination." *Amundson*, 68 Wis. 2d at 568.

Once a defendant has made the initial showing that the coercion defense is supported by the evidence in the light most favorable to the defendant, the burden of proof shifts to the State to prove beyond a reasonable doubt that the defense does not apply. *State v. Keeran*, 2004

WI App. 4, ¶ 6, 268 Wis. 2d 761, 674 N.W. 2d 570. Wisconsin Jury Instruction – Criminal 790 instructs the factfinder that the defense of coercion applies where "a threat by another person (other than the defendant's co-conspirator) caused the defendant to believe that [her] act was the only means of preventing imminent death or great bodily harm to [her]self and which pressure caused [her] to act as [s]he did," and that "the defendant's beliefs must have been reasonable."

Relevant to this case, the jury instruction states that "[a] belief may be reasonable even though mistaken," and "the reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of [her] acts and not from the viewpoint of the [factfinder] now." This is consistent with the treatment of privilege defenses even prior to their statutory codification: "If a person, without fault of his own, is attacked by another, and has reasonable ground to apprehend that he is in imminent danger of losing his life or receiving some bodily injury, he is justified in acting on such apprehension *regardless of the real facts*, even to the taking of life, if necessary." *See, e.g., Miller v. State*, 139 Wis. 57, 119 N.W. 850 (1909).

In this case, the trial court found that the defense of coercion did not apply. After acknowledging that the coercion defense applied to the case and that the State had the burden of proving beyond a reasonable doubt that Joan was not acting lawfully under the defense of coercion, the court stated:

> I do not find that the defense applies because of the timing issue. The Court can take everything as true up to the time that Dr. Stetzer leaves the driveway. Everything that was testified to by her, by the other witnesses can be exactly true. I can take that in the light most favorable to her all the way up to that point, and it is awful that she's had to go through

> that and found herself in that position that night. The crux of this is the defense only goes so far. It allows that it is the only means of preventing great bodily harm to her.

(R. 57, 170:11-21; A-App 3).

The trial court repeatedly made reference to the availability of other means of preventing great bodily harm: "The law carves out defenses. In this case, it's a very specific defense, and it only provides for a violation of the law *when it was the only means of preventing that great bodily harm*. Since her actions once she's out of that driveway and driving was not the only means of preventing great bodily harm, I find that the defense is beyond a reasonable doubt not available." (R. 57, 172:11-18; A-App. 5). This was so despite the trial court accepting that "definitely she had to get out of there, that there was a fear of great bodily harm or death[.]" (R. 57, 171:2-7; A-App. 4). The trial court also specifically held that Joan's actions were reasonable. However, despite her fear of great bodily harm or death and the reasonableness of her actions, "[t]he law, however, provides that it has to be the only means of preventing great bodily harm or imminent death."

In its recitation of the scope of the coercion privilege, the trial court incorrectly stated that the defense "only provides for a violation of the law when it was the only means of preventing that great bodily harm." This recitation misreads the statute, the case law that has developed around the defense of coercion, and the jury instructions. Each of those sources emphasize that the literal factual existence of other means of preventing that risk of death or great bodily harm is irrelevant to the defense, and that the proper inquiry is whether the actor *reasonably believes* that the actions are the only means of preventing great bodily harm or death. The sincerity and reasonableness of the actor's belief

about available means of preventing that harm is the crucial question for the factfinder, not whether the actor's beliefs were ultimately factually correct. *See, e.g., Miller v. State*, 139 Wis. 57.

While this is an objective test, the Wisconsin Supreme Court has recently reaffirmed that the proper inquiry is the reasonableness of the defendant's beliefs based on "the personal characteristics and histories of the parties." *State v. Johnson*, 2021 WI 61, ¶ 24, 397 Wis. 2d 633, 961 N.W. 2d 18. This is consistent with courts around the country, which have allowed victims of abuse to present expert testimony on battering and its effects in support of a coercion defense because it may help juries "understand the objective reasonableness of a defendant's actions in the situation [he or she] faced, which included the history of violent and psychological abuse." *State v. Kizer*, 2022 WI 58, ¶ 58, 403 Wis. 2d 142, 976 N.W. 2d 356 (Roggensack, J. dissenting) (quoting *United States v. Dingwall*, 6 F.4th 744, 754 (7th Cir. 2021).

The circuit court did not address the specific question of the reasonableness of Joan's actions and beliefs taking into account "the personal characteristics and histories of the parties" and "the history of violent and psychological abuse" she faced. In failing to do so, the circuit court relieved the State of the burden of proving beyond a reasonable doubt that Joan did not reasonably believe that her actions were the only means of preventing that harm. The circuit court misused its discretion in applying an incorrect legal standard. As a result, this Court should vacate the conviction and order a new trial.

CONCLUSION

On the evening of May 24, 2017, Joan Stetzer escaped from her abusive husband who was attacking her. Less than 10 minutes later, Joan was stopped by police. Joan told the officer that she was fleeing

from the danger of her husband's physical attack and that she was injured. Police spoke with her husband – believed him instead of Joan – and arrested Joan for OWI and Domestic Disorderly Conduct.

In making its findings of fact the trial court acknowledged that Joan's escape was reasonable given the attack of her husband. The trial court then erred, however, when it addressed the law of coercion; "*the law doesn't ask me to determine if her actions were reasonable.*" The law does so require: "The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of her acts and not from the viewpoint of the jury now." (Crim JI 790). The trial court's error of law thereby relieved the State of its burden to prove that Joan was not acting lawfully under the defense of coercion.

Dr. Stetzer respectfully requests that this Court vacate her conviction and order an acquittal, or, in the alternative, summarily reverse and remand this case for a new trial.

Dated at Waukesha, Wisconsin this 29th day of October, 2023.

KUCHLER & COTTON, S.C.

Electronically signed by
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief. The length of this brief is 5990 words as calculated by Microsoft Word's word count feature.

I further certify that filed with this brief is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated at Waukesha, Wisconsin this 29th day of October, 2023.

Electronically signed by Bradley W. Novreske
State Bar No. 1106967

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