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

REPLY BRIEF OF DEFENDANT-APPELLANT, JOAN L. STETZER

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FACTUAL CORRECTIONS

The State's recitation of facts sanitizes the abusive physical violence Joan faced which formed the basis for her decision to drive despite drinking alcohol earlier in the night. For example, the State described Joan as having "left and came back inside," after which "Behlmer chased her with a pot," Joan "got into a vehicle and then she pulled away." (St. Br. 9-10). In reality, Joan testified that after being shoved repeatedly, she walked into the garage, opened the garage door, and stood outside in the rain in her pajamas with no shoes, no phone, and no driver's license. (R. 57 at 62-63). Realizing she couldn't leave, she went back into the house through the basement door into the small hallway that leads into the kitchen. Bill, still in the kitchen, began yelling at her to "get the hell out" and chased her down the hallway with a look on his face that Joan had never seen on his face carrying a kitchen pot. He chased Joan into the garage and threw the heavy pot at her, narrowly missing her head. (*Id.* at 65-66).

The State describes that Joan "got into a vehicle" and "pulled away." (St. Br. 10). Joan testified that Bill chased her in a circle around the outside of the vehicle twice before she was able to get inside and lock the doors, at which point Bill began pounding on the windows yelling "I'm going to take you out, you fucking bitch!" (R. 57 at 66). She testified that she was afraid he was going to break the window, and that he did not appear to be calming down but had instead "gotten worse." (*Id.* at 68). Additionally, the State described the lake house as "a place that Behlmer also had access to," ignoring Joan's testimony that the doors at the lake house had interior security bolts that could be engaged from inside and would prevent someone from entering even if they had a key.

(*Id.* at 129-30).

ARGUMENT

The parties appear to be in agreement that the Court correctly found that Ms. Stetzer subjectively believed that her actions were necessary as a response to a threat of death or great bodily harm with no possible escape other than the commission of the criminal act. This met the first component of the coercion defense, the subjective component.

Here, the issue on appeal is the objective component – what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense, which must be determined from Joan's standpoint at the time of her acts and not from the viewpoint of the Court now. Wis. JI 780 – Coercion. Specifically, the trial court analyzed the objective component using a "reasonable person" standard that failed to include the "personal characteristics and histories of the parties" as required by *State v. Johnson*, 2021 WI 61, ¶ 24, 397 Wis. 2d 633, 961 N.W. 2d 18. The State incorrectly argues that these attributes are only applicable to the first component (Joan's subjective beliefs) and are not relevant to the objective component. The State is wrong.

At issue is what personal and historical characteristics we attribute to the hypothetical "reasonable person" when analyzing the objective component of the coercion defense. This is an objective test, asking what a person of ordinary intelligence and prudence would have believed in the defendant's position. The trial court abandoned this fact-specific, nuanced analysis and instead asked whether Joan's acts were the only means of preventing death or great bodily harm in the literal sense. Finding that they were not literally the only available means available

to Joan to escape the threat of death or great bodily harm, the trial court held that Joan's subjective belief was not objectively reasonable. The trial court stated that "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 the driveway and driving away 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).

In other words, the trial court's decision reflects a belief that the coercion defense is only available where a defendant's subjectively held belief is also literally factually correct, leaving no room for the application of the coercion defense to a subjectively held, objectively reasonable but nevertheless mistaken belief.

This narrowing of the objective component to such a limited binary is contrary to established case law and is explicitly addressed in the jury instructions which state that "a belief may be reasonable even though mistaken." This interpretation has consistently been applied in Wisconsin as far back as 1909: "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." *Miller v. State*, 139 Wis. 57, 119 N.W. 850 (1909).

In distilling the analysis to a determination of the factual, literal correctness of Joan's subjectively held belief, the trial court failed to apply the correct legal standard which required an analysis of the reasonableness of her beliefs based on an objective "reasonable person"

who shared the personal characteristics and the histories of the parties. The Wisconsin Supreme Court has recently had an opportunity to discuss this test, and emphasized that a court or jury must consider a defendant's "history of violent and psychological abuse" when determining whether the defendant's actions in the situation were objectively reasonable. *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).

In this case, the trial court should have considered what a person of ordinary intelligence and prudence *who shared Joan's trauma history of physical and psychological abuse and her lived experience of having her abuser make false reports to the police resulting in her arrest and charges filed against her* would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense. This is the "personal characteristics and histories of the parties" referenced in *Johnson*.

In this case, the evidence supports a finding that such a reasonable person would have objectively believed that Joan's actions were the only means of preventing her great bodily harm or death at the hands of her husband. Such a reasonable person would believe that to be true based on their trauma history and previous experiences without regard to the fact that other options were literally available. As the jury instructions state, the inquiry of reasonableness must be based on the standpoint of the defendant at the time of her acts and not from the viewpoint of the trial court. In this case, the trial court failed to consider the reasonableness of Joan's beliefs in light of her trauma history – particularly her history of being arrested and charged by the local police

department based on false accusations by her abuser – which explain her decision to not stop at the sight of the first police vehicle she observed. Notably, Joan was charged with disorderly conduct[1] – domestic abuse in this very case, demonstrating the reasonableness of her apprehension of local law enforcement in response to her abuse.

CONCLUSION

In making its findings of fact the trial court acknowledged that Joan's escape was subjectively 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 6th day of February, 2024.

KUCHLER & COTTON, S.C.

Electronically signed by
BRADLEY W. NOVRESKE
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[1] These charges were dismissed on motion by the State after Bill testified under oath at a motion hearing about the details of the encounter.