No. 2023AP874

STATE OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN,
Plaintiff-Respondent,

vs.

JOAN L. STETZER,
Defendant-Appellant.

PETITION FOR REVIEW

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1) Does Wis. Stat. § 939.46(1) permit a trial court to artificially and temporally subdivide a single "act" that is entitled to the privilege at its inception and determine whether each subdivided portion of the single "act" would be entitled to the privilege if viewed in isolation before the coercion defense will be applied?

The Court of Appeals answered: Yes.

2) If the answer to the above question is yes, do such limitations on the statutory coercion defense violate Marcy's Law by forcing victims of intimate violence facing a risk of death or great bodily harm to choose between remaining in that dangerous circumstance or risking criminal conviction if a court reviewing the victim's means of escape after the fact concludes that the defense, even if applicable at the inception of the act, would not apply to a temporal subsection of the single "act"?

The Court of Appeals did not address this issue.

3) Did the trial court fail to apply the correct legal standard by failing to consider the reasonableness of Joan's decision not to stop and report her husband's assault to the police from the perspective of a reasonable person with Joan's particular characteristics and personal history?

The Court of Appeals answered: No.

BRIEF STATEMENT OF CRITERIA FOR REVIEW

1. Section 809.62(1r)(c): A decision by this Court will help develop and harmonize the law surrounding the treatment of victims of intimate violence who must violate the law to escape death or great bodily harm, and the extent to which courts should dissect the actions and alternatives available to the victim in a hyper-technical manner which inevitably results in victims who acted under coercion losing the privilege in situations where public policy should strongly encourage victims to leave dangerous situations.

2. Section 809.62(1r)(d): The Court of Appeals' decision in this case is at odds with recent significant development in the treatment of victims by our criminal justice system. The narrow, artificially curtailed, and scrutinizing framework employed by the trial court and Court of Appeals is reminiscent of the historical distrust and skepticism of women victims of intimate or sexual violence. Unlike recent cases which have recognized the pervasive threats and attendant social harms of intimate violence and have emphasized the extent to which the law has evolved to address those threats, this case highlights the significant shortcomings that still exist in our laws and institutions. Our courts are failing to validate the experiences of women who have (and in many cases continue to) experienced intimate violence and failing to ensure that the mechanisms of our legal system protect these victims— not only from their abusers, but from antiquated laws that seek to punish these victims for making the "wrong" choice in how they escape the threat of death or great bodily harm.

STATEMENT OF THE CASE

This Petition, pursuant to Wis. Stat. § 808.10 and Wis. Stat. § (Rule) 809.62, seeks review of the decision and order of the Court of Appeals District II, in *State of Wisconsin v. Joan L. Stetzer*, case 2023AP874, filed on March 27, 2024.

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). 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).

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). 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). 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).

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). 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).

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). 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).

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). 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).

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). 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).

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). 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). At first, she didn't even know where she was going, she just knew she had to escape. (R. 57, 68:15-18). 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). 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). 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).

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).

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). Following this incident, Joan had ongoing hip problems and required six weeks of physical

therapy. (R. 57, 34:16-35:5).

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).

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).

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).

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).

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).

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). 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). 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).

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). 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). 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). 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). 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).

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). 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). 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). "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).

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). 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). "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).

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

The Court of Appeals, in an authored but unpublished decision, affirmed Joan's conviction, holding that the trial court had applied the correct legal framework and that Joan lost the coercion privilege when

she drove past the police cruiser without stopping to report her assault.

ARGUMENT

A. This case presents an opportunity for this Court to develop and harmonize the law as it evolves to provide greater validation and protection to victims of intimate violence, and to ensure that victims of intimate violence are not trapped between the risk of violence and the risk of criminalization.

American women are most often killed by a husband or lover, or ex-husband or ex-lover.[1] Intimate partner homicide is the largest category of murders of women, accounting for approximately 30-40% of murders of women according to the official counts based on the Supplemental Homicide Reports[2] (SHR; National Institute of Justice, 2000). Since the SHR misclassifies as many as 13% of intimate partner homicides of women as non-intimate partner, this percentage is undoubtedly an underestimate. In contrast to homicides of women, homicides by intimate partners account for a relatively small proportion of murders of men in the US, approximately 5-8%. This is a uniquely feminist issue, and women bear the risk of laws that fail to evolve in response. Abuse is most often a precursor of intimate partner homicides in cishet relationships, whether the victim is the male or female partner. The majority (67-75%) of intimate partner homicides involve battering of the female by the male intimate, no matter which partner is killed. [3]

Over the last several decades, our law has evolved away from an

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[1] Mercy, J.A., & Saltzman, L.E. (1989). Fatal violence among spouses in the United States 1976-85. American Journal of Public Health, 79, 595-599; Bailey, J.E. et. al. (1997). Risk factors for violent death of women in the home. Archives of Internal Medicine, 157, 777-82.

[2] National Institute of Justice (1997). A Study of Homicide in eight US Cities: An NIJ intramural research project. Washington, D.C.: USDOJ.

3 Roehl, Janice, et al. (2005). Intimate Partner Violence Risk Assessment Validation Study, Final Report. NCJRS.

inherent distrust of victims of intimate violence, a distrust rooted in historic notions of sexism. *See, e.g., State v. Johnson*, 2023 WI 39, ¶ 41-43, 407 Wis. 2d 195, 990 N.W. 2d 174. As noted above, victims of intimate violence, whether sexual assault or domestic violence, have historically been predominantly women; perpetrators of intimate violence (who uniquely benefit from this distrust and skepticism) have historically been predominantly men. As societal understanding of the prevalence and severity of intimate violence has increased, the law has adapted to reflect these understandings. That adaptation, however, has often been piecemeal and has lagged behind evolutions in societal understanding of these important issues. While the law has changed to remove many of the procedural and evidentiary barriers to prosecuting sexual assaults and has begun to accept the validity of expert testimony on post-assault behavior, post-traumatic stress disorder, and "battered woman syndrome," *Id.*, other aspects of the law have been left behind.

In addition to the changes in the law regarding intimate violence, there has been a paradigm shift in the recognition and codification of victim's rights. In April 1994, the Wisconsin Constitution was amended to affirm that "the state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy." *See* Wis. Const. art. I, § 9m (1994). A few years later, the legislature passed a comprehensive crime victims' bill of rights which was subsequently amended to grant crime victims an enforceable right to "fairness and respect." *See* Wis. Stat. § 950.04(1v)(ag). And in 2020, voters ratified Marsy's Law, which amended the Wisconsin Constitution once again to guarantee crime victims the rights "to be treated with dignity, respect, courtesy, sensitivity, and fairness," "to privacy," and "to reasonable protection

from the accused throughout the criminal justice process." *See* Wis. Const. art. I § 9m(2)(a), (b), and (f) (cleaned up). Additionally, Marsy's Law guarantees that these rights will be "protected by law in a manner no less vigorous than the protections afforded the accused." *Id.*, § 9m(2).

This case highlights an important example of a law which has failed to evolve to reflect modern societal understandings of intimate violence: the statutory coercion defense found in Wis. Stat. § 939.46(1). More specifically, Wisconsin courts are applying this statute in situations involving a victim fleeing from intimate violence in a way which merely pays lip-service to the recent evolutions of law and societal understanding surrounding intimate violence and places the victim in the dangerous position of choosing between escaping with the inherent risk of criminalization if that escape requires them to break the law in the process, or remaining in an abusive and potentially fatal environment.

In this case, the trial court found that Joan reasonably believed that her husband's violent assault put her in imminent danger of death or great bodily harm and that she reasonably believed driving with a prohibited alcohol concentration was the only means of escape *at the moment she began driving*. However, the trial court held that Joan lost the protection of the coercion defense when she crossed paths with a police cruiser while driving and did not stop to report the assault she was fleeing at that very moment, as at that point the court found "beyond a reasonable doubt she knows there's other means of safety around other than going to the lake house." This was so despite Joan's testimony that Joan considered stopping but decided against it because the last times that she reported that she was being physically abused, her husband lied

to the police and Joan herself was arrested and charged. Indeed, the same thing happened in this case—Joan was initially charged with disorderly conduct – domestic abuse after her husband lied to the police about what had occurred. That charge was ultimately dropped by the State after her husband recanted.

The trial court convicted Joan of operating a vehicle with a prohibited alcohol concentration, second offense. The Court of Appeals affirmed her conviction. Both courts applied the statutory coercion defense in a way that substituted the courts' view of the "reasonableness" of Joan's beliefs and actions for the view of an individual for the view of a "reasonable person" with the "personal characteristics and histories of the parties" as required by *State v. Johnson*, 2021 WI 61, ¶ 24. In this case, Joan's personal characteristics and histories includes *multiple* occasions in which she was arrested and charged after incidents of intimate violence she suffered at the hands of her husband. The courts' analysis ignored that troubling reality: Joan's decision to drive past the police cruiser without reporting the violence she was fleeing was reasonable because it was not certain that stopping and reporting her assault to the police would have resulted in her safety. In Joan's mind, the only means of escaping her husband's violence was to drive to her lake house where she could barricade herself inside. That belief was reasonable.

Beyond this, the trial court and Court of Appeals took a single offense – driving with a PAC—and divided into temporal subsections, treating it as several offenses all of which must be privileged under the coercion defense in isolation in order for Joan to be entitled to the privilege at all. That is a significant departure from the literal language of the statute and renders the statute impotent in all but the most limited of cases.

The Court of Appeals recited that the narrow statutory defense of coercion "requires that her otherwise unlawful act (driving with a PAC) was the only means of preventing imminent fear of death or bodily harm," but concludes that "Stetzer does not argue that an otherwise unlawful act *to prevent embarrassment or legal consequences* would satisfy this element. While this court acknowledges that such concerns may be legitimate and serious, the law provides that the coercion 'is a defense limited to the most severe form of inducement.'" Op. ¶ 24. The danger Joan faced was (as the trial court correctly found and the Court of Appeals conceded) the most severe form of inducement—Joan reasonably feared that her life was in danger, and that driving despite her consumption of alcohol was necessary to escape that danger. Applying Wis. Stat. § 939.46(1), the analysis should end there.

The statute 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*.

As the trial court found, Joan reasonably believed that her act (driving with a prohibited alcohol concentration) was the only means of preventing imminent death or great bodily harm to herself. Joan was prosecuted for a crime based on that act (driving with a prohibited alcohol concentration). Because Joan's act was caused by her reasonable belief that the act was the only means of preventing imminent death or great bodily harm, Wis. Stat. § 939.46(1) provides a perfect defense for that act. The statutory language of the statute does not support any other reading. The trial court and Court of Appeals usurped the role of

the legislature by reading into the statute requirements and qualifications on what constitutes the "act" that are unsupported by the language of the statute, limiting its application and depriving Joan of its protection.

There are no published opinions of this Court or the Court of Appeals which interprets the coercion statute to permit the trial court to deconstruct a single act into temporal components and then to apply the coercion statute to each part serially in order to determine whether the victim's means of escape can still be criminalized despite the defense applying at its inception. The logical shortcomings of this approach are evident when considering that Joan could not be criminally charged and convicted for separate offenses of driving with a prohibited alcohol concentration if the temporal duration of the uninterrupted driving offense was artificially subdivided by the State into separate "offenses" defined as a temporal fraction of the whole. It is no more appropriate in this case to artificially subdivide Joan's privileged act to find a point on the timeline of the single, uninterrupted driving offense where the coercion defense would no longer apply if considered in isolation. Yet that is precisely what the trial court did, and precisely what the Court of Appeals decided is the correct application of Wis. Stat. § 939.46(1).

The context of Joan's actions must not be sanitized and stripped from the legal analysis—Joan was objectively at risk of death or great bodily harm. She was chased out of her house with a heavy frying pan which was thrown at her head and narrowly missed her. She was in a nightgown with bare feet and it was raining outside. She did not have her own cell phone with her. She was chased into the driveway, chased around the truck multiple times until her husband slipped, and when

she managed to lock herself in the truck, her husband grabbed onto the side and pounded on the windows trying to break them while she pulled away. It is through no fault of her own that Joan was forced to drive away from her house despite having consumed alcohol. Joan did not want to drive that evening; her choice was to try to reach the truck and flee or to stay and face the very real risk of death or great bodily harm. It should not be lost on this Court that Joan would have been privileged to use deadly force in the face of this threat had she had the opportunity or ability to do so. It defies logic that the coercion defense would not protect Joan from the legal consequences of driving with a prohibited alcohol concentration to escape a danger that she could have responded to using deadly force and been protected by the privilege of perfect self-defense.

Joan is the victim of intimate violence severe enough to implicate the coercion defense at the inception of her actions. In this case, the statutory and constitutional rights afforded crime victims were worthless to Joan. Instead of her abuser being arrested and charged and Joan being treated and taken home to safety, Joan was arrested and charged not only with the PAC that she was convicted of, but of disorderly conduct – domestic abuse. No charges were ever filed against her husband. Joan was not treated with "dignity, respect, courtesy, sensitivity, and fairness." She was not given "privacy" or "reasonable protection" from her abuser. Her rights were not "protected by law in a manner no less vigorous than the protections afforded the accused." Wis. Const. art. I, § 9m(2)(a), (b), and (f). Instead, she became the accused. She has spent the last 7 years defending her decision to leave a potentially fatal encounter despite having consumed alcohol, an action that was found by the trial court to

have been caused by Joan's reasonable belief that the act was necessary to prevent her own death or great bodily harm.

Wis. Stat. § 939.46(1) does not permit the trial court or Court of Appeals to artificially divide an "act" covered by the statute into several temporally-defined subsections in order to find a way to attach criminal liability to the desperate acts of a victim of intimate violence fleeing a possibly-fatal encounter. The trial court was not deterred by that, and did so. The Court of Appeals affirmed, applying the same artificial partitioning of the single "act." This is not the correct application of the law. And to the extent this Court finds that it is, the law is wrong if the result is the conviction of a victim of intimate violence while the abuser faces no legal repercussions for creating the circumstances which in this case led to Joan's need to violate the law by driving.

CONCLUSION

This case presents the Court with the opportunity to correct the misapplication of Wis. Stat. § 939.46(1) and reaffirm our state's commitment to wielding the law in furtherance of achieving justice for victims. The trial court and Court of Appeals' application of the statute places another roadblock between victims of intimate violence and safety by creating hesitation where none should exist. Joan drove with a prohibited alcohol concentration because the alternative was possibly being murdered by her husband. It is the undersigned's opinion that the outcome of this case is a disheartening and offensive reminder of the extent to which our system has failed women victims of intimate and sexual violence. This Court is uniquely positioned to ensure that those in Joan's position are supported in every effort to achieve safety and that they will not be punished by our criminal laws after-the-fact for doing so.

As a society, we must recognize that it is better to excuse Joan (and

others in her unfortunate position) for violating the law in this limited way than to engage in hand-wringing over her obituary wondering how we could have missed the warning signs.

Dated at Waukesha, Wisconsin this 22nd day of April, 2024

KUCHLER & COTTON, S.C.

Electronically signed by
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CERTIFICATE OF COMPLIANCE

I hereby certify that this petition conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief as required by Wis. Stat. § 809.62(4). The length of this petition is 7133 words as calculated by the Microsoft Word word-count function.

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 Court of Appeals and circuit court; (3) 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 22nd day of April, 2024.

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

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