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CLERK OF WISCONSIN
SUPREME COURT

No. 2023AP874

STATE OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN,
Plaintiff-Respondent,

vs.

JOAN L. STETZER,
Defendant-Appellant-Petitioner.

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

OPENING BRIEF OF DEFENDANT-APPELLANT-PETITIONER, JOAN L. STETZER

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ISSUES PRESENTED FOR REVIEW

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.**

Joan Stetzer answer: **No.** An act that is entitled to the coercion privilege under Wis. Stat. § 939.46(1), at its inception is a "complete defense" to a prosecution for that act.

2. 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.**

Joan Stetzer answer: **Yes.** The trial court failed to apply the objective reasonableness test as set forth in Wis. Crim-JI 790. The trial court erroneously concluded that "…the law doesn't ask me to determine if her actions were reasonable… The law requires that this is the only means of prevention." (R124/171:25-72:3)[1].

ORAL ARGUMENT AND PUBLICATION

Both oral argument and publication of opinions are customary for this court.

[1] Citations to the record are in format R## / ## where R## references the document number from the record and ## references the page number of that document. Where transcripts are cited, the line numbers of the quoted portion is denoted with a colon. For example, R1/5:2-8 denotes Document 1 of the record starting on page 5, line 2 and quoting through line 8.

STATEMENT OF THE CASE: SUMMARY ARGUMENT

Dr. Joan Stetzer is a domestic abuse survivor who suffers from PTSD and Battered Woman Syndrome (R114/16, 18). For battered women the world is not a safe place (R.114/17);

> … if you're not safe is it really changes your entire perception of reality. It changes your choices. It puts you in a position where you can't respond in a way that a reasonable person would respond under similar situations. Safety is really an important issue." Dr, Darald Hanusa (R125/90:11-15).

Dr. Darald Hanusa, a licensed psychotherapist with a doctorate in clinical social work, provided expert testimony as to the effects of domestic violence and battered woman syndrome, specifically in the realm of how battered woman see the world around them (R.125/83:24-84:13; 85:7-15). Dr. Hanusa's expertise was not challenged by the State. Dr. Hanusa testified that the question for victims of domestic violence isn't how a reasonable person reacts in a violent situation; "The question is, given trauma that the victim of domestic violence has received, how would a reasonable domestic violence survivor respond." (R125/91:1-5).

The facts in this case were not disputed. The State did not challenge that Joan is a battered woman and the trial court found that on May 24, 2017, Joan was coerced to flee in her car; "…definitely she had to get out of there, that there was a fear of great bodily harm or death, …" (R124/171:5-7, A.App.19).

Despite this finding of coercion in the driveway of the family home, the trial court erred when it concluded that "…**the law doesn't ask me to determine if *her* actions were reasonable**. …" (R124/171-2, A.App.19) (emphasis supplied). Factfinders in a coercion case are instructed that they are to consider whether the defendant was acting reasonably while committing the offense and the defendant's reasonableness is to be considered;

> "…in the defendant's position under the circumstances that existed at the time of the alleged offense. The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of his acts and not from the viewpoint of the jury now." (R103/Wis Crim JI -790).

The trial court erred in applying a "timing issue" to the facts that occurred after Joan had acquired the coercion privilege and then erred in applying a reasonable person test rather than an objective reasonable person test. Joan requests that this Court reverse the Decision of the Court of Appeals and remand this matter to the trial court for entry of a Judgment of Acquittal.

STATEMENT OF FACTS

Introduction

Joan Stetzer is a domestic abuse survivor and battered woman who has suffered decades of physical, sexual and psychological abuse from her husband, Bill.

A. History of physical, sexual & psychological abuse.

Joan and Bill married in 1989 (R124/8:16-22). They have four children. Their third child has special needs (R124/9-10). Joan is and has been an anesthesiologist in the Waukesha medical community for over 30 years. Bill is a dentist (R125/5:25-6:1).

In 2017, Joan and Bill owned two homes, a primary family home in Pewaukee and a cottage 15 minutes from the family home in Merton (R124/9:3-9).

Sexual violence occurred throughout their marriage. Bill twice infected Joan with STDs (R124/33). Upon the birth of their special needs child Bill became progressively distant, then verbally abusive and then physically violent (R.124/10:4-11:9; 12:16-18; 13:10-20). Bill's physical abuse of Joan escalated in 2015 after Joan confronted Bill about multiple affairs he had dating back 17 years (R124/14:18-19; 15:1-8). During periods of abuse Joan would use the cottage as a safe house. The cottage has interior locks on the doors that cannot be unlocked from the outside (R124/16:6-25:17).

Bill's history of abuse was testified to at trial and it was not contested. There is no need to replay the evidence of violence that is in the record (R124/24; 28; 30; 32; 34; 36). On two occasions Joan reported Bill's abuse to law enforcement. On both occasions law enforcement arrested Joan after talking to Bill (R124/82:6-16). Bill did not dispute Joan's testimony (R125/201:14-19).

Bill testified at trial that he was physically violent with Joan at least 15 times and that he had been psychologically and verbally abusive to Joan "hundreds" of times (R125/206:8-25; 207:1-25). Joan testified that she never filed for divorce as she believes in her Catholic vow of marriage and their son's special needs makes it difficult to separate (R124/17-18).

B. May 24, 2017.

1. **Bill threatens Joan's life over clothing.**

On May 23, 2017, the family (Bill, Joan and the four children) had dinner around 6:00 p.m. and by 8:00 p.m. the kids had retired to their bedrooms (R124/44). An argument began over Bill's affairs. Bill told Joan to "move on." Bill told Joan that the affairs were her fault. Bill told Joan that she was a cunt/bitch/nuts/crazy, and stupid and became physical with Joan. Bill then stormed out of the house (R124/48-49; 50:16-18; 51:11-12).

Joan, upset and having no plans to leave the house that night consumed wine (R124/52). Joan collected Bill's clothes, placed them on the back patio, and texted Bill that he should get his clothes and move out (R124/54; 55:13-24). Joan went to bed around 10:00 p.m.

Joan was awoken at 1:00 a.m. by a door slamming and Bill "yelling and screaming get the fuck out of bed, go pick up my clothes, you get the hell out of here." (R124/56:7-11; 57:6-8). Joan, dressed only in pajamas (t-shirt and pajama shorts) got out of bed and told Bill she would not pick up his

clothes (R124/56:12-16). Bill responded, "I'm going to take you out if you don't do it" and shoved Joan towards the patio door to get his clothes. Joan refused (R124/58:22-25; 57:23-58:3).

Bill testified that, upon seeing his clothes outside, he was "very upset" (R125/195:5-11). Bill testified that he confronted Joan telling her to "get your fucking ass out there and get my fucking clothes." (R125/197:14-15). Bill testified that he told Joan that she was "going to pay for this," and that he was going to "kick your fucking ass." (R125/200:21-201:5; 218:13-15). Bill testified that when Joan refused to get his clothes that he became "even angrier" and began pushing and shoving Joan (R125/198:22-199:25; 1-8; 198:4). Bill threw Joan down the basement stairs (R124/60:1-15).

Bill testified that he didn't know if he pushed Joan down the stairs, but admitted that he did hear her "thunk down" the stairs and heard a "boom." (R125/199:10-21). Bill admitted he walked away when he heard Joan "thump" down the stairs (R125/200:14-18). Joan testified that as she laid at the bottom of the stairs she told Bill she was in great pain. Bill said he didn't give a fuck and told her to go get his clothes (R124/61:4-5; 62:3-10; 121:20-21). Joan knew she needed medical attention but did not want the embarrassment and humiliation of going to the emergency room where she would see the people she works with. Joan self-medicated with wine instead of seeking medical attention (R124/61:21-62:1).

2. **Bill threatens to have Joan arrested.**

Bill testified that he taunted Joan that he would call 911 if she did not get his clothes, "…actually, I was taunting her. You know, they're going to come. They're going to get you just like the last time." (R125/201:14-19). Joan, dressed only in pajamas with no shoes, no phone, no license, told Bill she was leaving (R124/62:14-25).

Joan went through the garage to her car which was parked outside. When Joan got outside to her car and stood in the rain in nothing but her pajamas she realized that the situation "…was bad all the way around … I have no shoes, I have no wallet, I have no driver's license, I have no phone" and decided she needed to go back into the house (R.124/64:13-22; 126:19-24).

While Joan was outside Bill called 911 but then hung up. When 911 called back Bill testified that "[He] was very calm with the 911 operator." (R125/203:10-11). Officer Kuehl, a City of Delafield Police officer, testified that on May 24, 2017, at 2:17 a.m., she was advised of a 911 hang-up call in the Town of Delafield and advised that a female had left the residence in a black Toyota Sequoia and possibly in route to a location in the North Lake and Merton area and that the female subject was impaired (R125/17:24-18:11). Bill provided that information to dispatch.

3. **Bill chases Joan from the house.**

Bill was surprised when Joan came back in as he had just told police that Joan would be driving to the cottage. Bill testified that "I told the 911 operator she left, but she hadn't… she was standing there, and she was wet. She had her pajamas on. She didn't – I don't even think she had shoes on. I was in the kitchen, and I grabbed a pot. I went running down the hallway. Get the fuck out of here. Get your fucking goddamn ass out of here." (R125/202:12-19). Joan testified that when she came in Bill was hanging up the phone and said, "what the hell are you doing here, get the hell out" and started to run at Joan with a closed fist and a look on his face that Joan had never seen (R124/65:10-17). Joan saw Bill grab a large metal pot as he raced towards her.

Scared, Joan ran. As Joan ran through the garage Bill threw the metal pot at her, just missing her head while yelling "I'm going to take you out." (R124/142:9-11). Bill testified that as he chased Joan he "whipped" the pot at her but it missed and hit the wall; "…I could see fear in her face and new (sic) that I could force her out." (R125/204:4-8; R115).

Joan squeezed under the opening garage door and ran around her car twice to avoid Bill catching her. Bill saw that Joan was not going to get in her car before he caught her;

> "so she took off around the side of the truck. She ran around the backside of the truck. I ran there. When I hit the grass, I slipped and fell. I got up, and I started chasing her around the other side of the truck and back in. She was in the truck by then. She had it started, and she started pulling down the driveway. … I was banging on the window. Get the fuck out of here." (R125/204:11-23; 223:4-5).

Once in her car, Joan locked the doors and started the car while Bill was pounding on the windows and threatening that he was "going to take you out you fucking bitch." (R124/65-66). Joan drove to "escape." (R124/68:15-18). Bill testified that he continued running halfway down the driveway banging on the window and threatening Joan, admitting that "I'd never been so angry in my life." (R125/205:1-2; 205:15). Joan saw headlights behind her as she drove away and assumed Bill was chasing her (R124/72:1-6).

4. **Bill lies to the police to set a trap for Joan.**

Law enforcement arrived at the family home shortly after Joan fled. Bill testified that he told police that, "Nothing happened. There was no physical abuse. You know, just that, you know, it was all calm." (R125/208:17-19). Bill admitted at trial that his statements to police were lies (R125/208:17-24; 227:2-11; 230:14-16)

Law enforcement did not treat Bill's statements as lies. Officer Kuehl, made aware of Joan's alleged inebriated state and where she was going, consulted her map and determined that "the most direct route" to the cottage would be for Joan to take Golf Road to Highway 83. Officer Kuehl went to Golf Road and Hwy 83 to watch for Joan's vehicle (R125/18:18-19:1). Joan took the

route as predicted by Officer Kuehl and Joan passed Officer Kuehl's squad (R125/18:21-23). Officer Kuehl began following Joan's vehicle at approximately 2:20 a.m. (i.e., approximately 3 minutes had passed since Officer Kuehl learned of the 911 call from Joan's house) (R125/30:16).

Officer Kuehl provided dispatch with Joan's vehicle registration and was advised that the registration "matched the **suspect** vehicle." (R125/21:15-16) (emphasis supplied). Joan, having just been physically attacked and threatened with death was now a criminal "suspect" due to Bill's lies.

Officer Kuehl followed Joan's vehicle for a couple miles and then stopped Joan's vehicle for weaving (R125/20:5-7; 31:7) Joan testified that she was in a state of fear and panic during the time she drove from her home to the cottage and felt her life was in danger (R124/73:25-74:14). Joan testified that she had driven 6-8 minutes from the time she had left her house to the time she was she was pulled over by Officer Kuehl (R124/70:8-12). Joan testified that when she turned onto Hwy 83 from Golf Road she did see the squad car but she did not pull over as;

> I thought about it. I thought should I stop, and I thought no, I'm not going to stop, I have called the police on two other occasions when being physically abused. Bill lied and I got arrested (R124/72:19-22).

When Officer Kuehl approached Joan's car, Joan told Officer Kuehl that she was escaping from the abuse of her husband (R124/75:5-17). Officer Kuehl advised Joan that she was stopped for "swerving in her lane, and of the 911

call from her residence." (R125/23:11-12). Joan told Officer Kuehl that her husband had thrown her down the stairs at her residence, scratched her face and that she was trying to get away from him (R125/32:19-21; 38:16-18; 23:15-16; 36:12-19).

Officer Kuehl testified that Joan was dressed in pajamas, did not have a driver's license and could not recall if Joan had shoes on (R125/35:1-12). While Joan's eyes were bloodshot Officer Kuehl noted that "she was also emotional and crying at times." (R125/24:8-9). Joan identified herself and admitted that she had consumed wine at home (R125/22:20-21; 24:12).

Officer Kuehl asked Joan where she was going and Joan said that she was going to her second residence (R125/24:14-16). Officer Kuehl testified that Joan's direction of travel was consistent with Joan heading to her lake home (R125/35:23-25). Officer Kuehl asked Joan who called 911 and Joan said the caller was her husband (R125/25:8-9). Officer Kuehl testified that Joan appeared afraid of her husband and that "she was just trying to get out of there." (R125/28:8-11). Officer Kuehl testified that Joan was honest with her, admitted to drinking, was cooperative, answered all of her questions and that her statements of abuse by her husband never changed (R125/39:22-40:8; 40:20-24).

5. **Waukesha Sheriff's Department Accepts Bill's Lies.**

Officer Kuehl decided that as Waukesha County was handling the domestic abuse investigation, the Delafield Police Department would not handle the OWI investigation and she would turn over the entire stop and investigation to the sheriff's department to run with their domestic abuse investigation (R125/25:2-6).

Deputy Antonio Dominguez was being field trained on May 24, 2017, as he was new to the Waukesha Sheriff's Department. Deputy Score (Skaar) was his training officer (R125/68:1-8; R1). At 2:13 a.m., Deputy Dominguez was dispatched to Joan's home for a "911 hang-up call." (R125/45:20-46:2). Deputy Dominguez briefly spoke to Joan's husband who told him Joan was going to their other residence on North Lake and that she had been drinking and on medication before she left (R125/47:9-16).

Deputy Dominguez testified that his responsibility on May 24, 2017, was to investigate the OWI and he was not assigned to investigate the domestic abuse allegations (R125/74:6-16). Deputy Dominguez left the Oakton Ave. home and went to Joan's traffic stop which was a couple miles from the Oakton Ave home (R125/66:13-25).

Upon arrival Officer Kuehl requested that Deputy Dominguez investigate a possible OWI (R125/47:20-48:24). Deputy Dominguez made contact with Joan and told her that he was investigating an OWI (R125/49:12-

15). Joan told Deputy Dominguez that her husband attacked her and she fled from the attack (R125/68:24-69:6). Deputy Dominguez' testified that he never pressed Joan on what happened inside the home (R125/76:19-22; 77:14-16).

Joan admitted to Deputy Dominguez that she had consumed wine and sleeping medication (R125/50:7-9). Deputy Dominguez could not recall if Joan had shoes on during field sobriety testing (R125/52:13-14). Joan told Deputy Dominguez during the field sobriety tests that she had a hip injury (R125/51:22-23). Following completion of the field sobriety tests, Joan was arrested for OWI (R125/58:25-59:1). Joan was transported to Waukesha Memorial Hospital for blood tests (R125/60:12-13). Deputy Dominguez testified that Joan's demeanor was fine throughout his interaction with her and that at the hospital she asked to see medical staff due to pain and trouble breathing (R125/60:19-18; 61:1-11).

Joan testified that Deputy Dominguez training officer, Deputy Skaar (Deputy Skaar did not testify) called Joan a liar, narcissistic and was demeaning and belittling to her (R124/75:19-24; 77:17-23). While waiting for the blood test Joan was in pain from her injuries and could not remain seated so she moved to the floor. Deputy Skaar told Joan to get up and when she couldn't, he pulled her up by her arms and when he put her on her feet, Joan collapsed to the floor (R124/78:5-25). As soon as Deputy Skaar left the room, another deputy came in and told Joan that "we've got some help on the way"

and she was shortly thereafter seen by medical staff for the injuries inflicted upon her by Bill (R124/79:8-15). Joan required weeks of physical therapy for injuries to her hip and neck from Bill's attack on May 24, 2017 (R124/79:16-22).

As had happened in the past, law enforcement believed Bill. Joan was charged not only with OWI-2nd, but also Disorderly Conduct (R124/82:6-16; R1).

C. Joan's actions on May 24, 2017 were objectively reasonable given Joan's history of PTSD and Battered Woman Syndrome.

Darald Hanusa, a licensed psychotherapist with a doctorate in clinical social work provided expert testimony as to the effects of domestic violence and battered woman syndrome both in general and as applied to Joan. Dr. Hanusa has worked for over 40 years in the field of domestic violence. Neither Dr. Hanusa's expertise nor his testimony was challenged by the State (R125/83:24-84:13; 85:7-15).

For those who have suffered domestic abuse, the question is not what would a reasonable person do under a set of circumstances, it's what would a victim of domestic violence do under those circumstances (R125/119:11-14). Domestic violence, at its very core, carries the idea that abusers want power and control and that they'll use whatever tactics they can, in order to control their partners (R125/92:3-9). "Battering" is the mechanism by which an abuser

controls their partner through fear. Battering causes fear and "[f]ear really controls her, every decision she makes." (R125/112:1-11). Dr. Hanusa explained that an abuser doesn't have to beat his wife every day for him to get what he wants as the psychological threat of physical violence serves to modify a battered woman's behavior (R125/106:19-23).

Dr Hanusa testified that beyond physical and emotional abuse, battered woman suffer common effects;

Embarrassment: A huge factor for woman who are abused. One does not have to be a woman of prominence to feel embarrassed about a partner who abuses you (R125/109:18-24).

Self-blame: Battered woman blame themselves. … What's wrong with me? It must be me. He's telling me its me. He's not doing this to everybody else. It must be me. Self-blame, low self-esteem and self-doubt results (R125/112:1-11).

***Victimization*:** Society victimizes the victims all the time;

> If she stays with an abuser she's perceived as weak or passive.
> There's something wrong with her.
> She should've left.
> If she didn't leave it can't be that bad.
> If she returns to her abuser, there's something wrong with her.
> If she leaves her abuser, then she's a failure.
> She failed to keep the family together.
> She has to control everything. (R125/116:19-24; 117:5-14).

***Substance abuse*:** Seventy percent of battered women abuse some substance, usually alcohol (R125/118:9-10).

***Trauma Bond*:** Trauma bond is a strong emotional connection that happens when the abuser alternates between kindness and brutality (R125/120:20-25). The victim bonds to the warm and positive side of her abuser and sees that side of him. It is why a victim can convince themselves that it's okay to go back or stay with their abuser (R125/122:6-9).

***Survival Factors*:** battered woman,

> Become Submissive
> Become Passive
> Become Docile
> Become Dependent
> Have a Lack of initiative
> Have the Inability to think for themselves (R125/122:12-17).

Denial: Battered woman create their own form of denial;

> It's really not that bad
> He's a good guy when he's not being abusive
> I am not afraid (R125/123:19-25).

Battered woman change their appraisal of themselves and blame themselves for causing the abuse, for not being able to stop the abuse, for not being able to tolerate the abuse, or for not leaving the relationship (R114/17). Battered woman develop a "continuum of tolerance" (a "latitude of acceptance"); their core beliefs about what is acceptable and what is not may change and they learn to tolerate behaviors as the price for maintaining other things which are of value to them, such as having a relationship, a family, and children (R114/17).

Because abuse often occurs in the home, a battered woman has trouble believing that the world is a safe place. Because a woman experiences violence in an intimate relationship where there is a presumption of love, a battered woman struggles with making sense of what love is (R114/18-19).

Dr. Hanusa opined that Joan is the victim of physical, psychological, and sexual abuse from her husband and is at a high risk of being killed by Bill (R125/138:4-14; 142:5-10; 152:19-25). Bill's actions validated Dr. Hanusa's opinion that Joan's belief that law enforcement are "the last people she's going to call for help" is a reasonable belief given Bill's repeated manipulation of law enforcement (R125/180:21-25).

Dr. Hanusa diagnosed Joan with "309.81 Post Traumatic Stress Disorder, Battered Woman Syndrome (DSM-5, 2013) (R114/16-18; R125/154:21-25; 155:15-22). Joan's PTSD and battered woman's syndrome manifests itself in fear and a belief that the world is not a safe place (R114/17). 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." (R114/20).

PROCEDURAL HISTORY

Joan was charged with OWI 2nd Offense and Disorderly Conduct – Domestic Abuse (R1). An amended criminal complaint added a BAC charge of

0.113 (R13). The State dismissed the Disorderly Conduct – Domestic Abuse charge when Bill admitted his lies.

In the trial to the Court the State presented two witnesses; Officer Kuehl and, Deputy Dominguez, neither of whom investigated what happened at the family home on May 24, 2017. The defense called three witnesses; Dr. Hanusa, Bill, and Joan.

The trial court found Joan guilty and the Court of Appeals affirmed Joan's conviction on grounds that the trial court "correctly applied the law." (R156/2:4-5; A-App 2).

ARGUMENT

I. Law of Coercion

Coercion is defined by statute as:

> 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. Wis. Stat. §939.46(1).

Coercion provides a "complete defense" to any crime except first-degree intentional homicide. Wis. Stat. § 939.45(1) ("when an actor's conduct occurs under circumstances of coercion," the actor's conduct is privileged and "is a defense to prosecution for any crime based on that conduct."). *State v. Keeran*, 2004 WI App 4, ¶ 5, 268 Wis. 2d 761, 674

N.W.2d 570; *Moes v. State*, 91 Wis. 2d 756, 763; 284 N.W. 2d 66 (1979). Our legislature excepted first-degree intentional homicide from the coercion defense and could have excepted operating a motor vehicle while impaired but it has not done so.

The rationale for the coercion defense is that it is better to allow a defendant violate a lesser evil so as to avoid a greater evil. The "lesser evil" criminal conduct is justified as 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, 53-54; 318 N.W. 2d 370 (1982) (citing to Remington and Helstad, *The Mental Element in Crime — A Legislative Problem*, 1952 Wis. L. Rev. 644, 655.); *See also Moes*, 91 Wis. 2d at 768; La Fave and Scott, *Criminal Law*, sec. 48, p 372 (1972); *State v. Kizer*, 2022 WI 58, ¶ 42, 403 Wis. 2d 142, 976 N.W. 2d 356 (Roggensack, dissenting).

A defendant seeking a coercion defense instruction must meet an initial burden of producing some evidence to support the defense. The State acknowledged that Joan's evidence supported a coercion defense and warranted a coercion jury instruction (R124/147:1-4). Once a defendant puts forth sufficient evidence for the coercion instruction to go to the jury, the burden is then on the State to prove beyond a reasonable

doubt that the defense does not apply. *Kizer*, 403 Wis. 2d at ¶9; *Keeran*, 268 Wis. 2d at ¶6; *Moes,* 91 Wis. 2d 756 (1979); Wis JI-Crim 790.

Coercion is a statutory defense under Wis. Stat. § 939.46(1). "[S]tatutory interpretation 'begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.' Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *State ex. rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted). "[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Id.*, ¶46. "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." *Id.* (citation omitted). Under Wis. Stat. § 939.46(1), "Privilege" is a closely-related statute and it likewise provides that a coerced actor's conduct is privileged, "although otherwise criminal," and is a defense to prosecution for any crime based on "that conduct."

The language of Wis. Stat. § 939.46(1) is plain. If a threat causes a person to reasonably believe that her act is the only means of preventing imminent death or great bodily harm to the person and that threat causes her to so act then the privilege of coercion applies and the privilege is a defense "to a prosecution for any crime based on that act (except first-degree intentional homicide).

The State failed to prove beyond a reasonable doubt that the coercion defense did not apply. The State produced no evidence that Bill did not threaten to "take" Joan "out" in the driveway; produced no evidence that Joan had any option available to her other than to flee in her car as Bill attacked her; produced no evidence that Joan did not reasonably believe that fleeing from Bill in her car was her only means of preventing her death or great bodily harm; and produced no evidence that Bill's attack did not cause Joan to flee in her car.

The State's failure to meet its burden of proof was confirmed by the findings of the trial court "…definitely she had to get out of there, that there was a fear of great bodily harm or death, …" (R124/171:4-7, A.App.19). Given the State's failure to meet its burden of proof Joan had a complete "defense to a prosecution for any crime based on that act." Wis. Stat. § 939.46(1)

Joan did not lose her coercion privilege by leaving the driveway and did not lose her privilege of coercion when her driving no longer was "…the only means of preventing imminent death or great bodily harm" to Joan. The clause "…the only means of preventing imminent death or great bodily harm" is a finding precedent to the determination that coercion existed. The clause applies only to whether the privilege exists in the first place and is only applicable to a person coerced into violating a "lesser evil." Once the coercion privilege is won it is a complete defense "to a prosecution for any crime based on that act." *State v. Kareen*, 2004 WI.App. 4, ¶5, 268 Wis.2d 761, 674 N.W.2d 570 (quoting Wis.Stat. §939.46(1) (2001-02).

Standard of Review: Whether the State's proof met the beyond a reasonable doubt burden is a question of law, which this Court reviews *de novo*. *Burg v. Miniature Precision Components, Inc.*, 111 Wis. 2d 1, 12, 330 N.W.2d 192 (1983) ("Although credibility is a matter for the trier of fact, whether a party has met its burden of establishing a prima facie case is a question of law which this court may examine independently without giving deference to the trial court's conclusions"); *Jones v. State*, 226 Wis. 2d 565, ¶ 61, 594 N.W.2d 738 (1999) ("Whether a party has met its burden of proof is a question of law which we examine without

deference to the circuit court's conclusion."). Credibility was not an issue in this case (R124/169-70 A.App. 18; 173:2-3. A.App. 21).

II. The Trial Court Erred As A Matter of Law When It Revoked Joan's Coercion Privilege By Imposing A "Timing Issue"

The trial court correctly found that Joan "…definitely she had to get out of there, that there was a fear of great bodily harm or death, …" (R124/171:4-7, A.App. 19). The court then contradicted itself by finding that the coercion defense did not apply;

> ". . . because of the timing issue… 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 (R124/170:11-21. A.App. 18) **Once she leaves the driveway**, and I understand that she testified that she thought the lights were still on 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 a reasonable person of ordinary intelligence and prudence do." (R124/170:11-171:2, A.App.18-19) (emphasis supplied)

The trial court also found 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 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." (R124/172:11-18 A.App. 20).

As an initial matter, the trial court's insertion of a "timing" parameter into the statutory coercion defense is without support in Wis. Stat. § 939.46(1). The only "timing" parameter within Wis. Stat. § 939.46(1), is the time that the threat is made by the abuser causing the threatened person to act based on the threat; i.e., the threatened person chooses a "lesser evil" to avoid imminent death or great harm from the abuser. Wis. Stat. § 939.46(1), does not define

when the privilege of the "lesser evil" expires; Wis. Stat. § 939.46(1), only provides that the "lesser evil" is "a defense to a prosecution for any crime based on that act" which is a "complete defense." *State v. Keeran*, 2004 WI App 4, ¶ 5, 268 Wis. 2d 761, 674 N.W.2d 570.

The trial court erred in interpreting the statutory language, "only means of preventing imminent death or great bodily harm" as applying not just at the time and place that Bill threatened to kill and maim Joan in the driveway, but also as an element that Joan was required to meet the entire time she fled in her vehicle after escaping from Bill. The trial court erred in constructing a minute-by-minute review of the reasonableness of Joan's actions as she drove, and erred in requiring that the moment she reached what could potentially be a safe place, that she had to immediately stop and exit her vehicle. Absent the police squad, the trial court never defined what that safe place would be.

The trial court's interpretation of the coercion defense does not comply with the plain reading of Wis. Stat. § 939.46(1) and certainly is not how it should work. Once Joan was coerced into driving she had a "complete defense" to prosecution for that act/conduct of driving. No language within § 939.46(1), instructs a court to temporally subdivide a coerced actor's act/conduct into minute-by-minute separate acts and then allow the court to make a determination as to what the actor should have done within each of those segments of time.

The trial court employed also the wrong legal standard in applying its "timing issue;"

> "…the law doesn't ask me to determine if her actions were reasonable. The law requires that this is the only means of prevention." (R124/71-72) "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* (R124/173:2-5) (emphasis added).

Assessing whether Joan's post-coercion actions were *in fact* the only means of preventing death or great harm—a standard the trial court articulated at least four times in the course of its decision—was legal error. As set forth above, the clause "the only means of preventing great bodily harm or imminent death" applies to whether coercion took place in the first instance. The law does not restrict the "complete defense" of coercion to only when the abused is facing imminent death or great bodily harm, as a defense to suffering the "greater evil" a coerced actor may commit the "lesser evil".

Bill's threats of death caused Joan to get behind the wheel of her car to save her life and our legislature has given coerced persons such as Joan, the privilege to commit a lesser evil to avoid a greater evil. The State did not disprove the coercion defense and the factfinder found that Joan did have the privilege when she fled from her home. As a "complete defense" those facts should end the inquiry.[2]

[2] This is not to say that Joan had complete immunity from operating her motor vehicle while impaired regardless of her subsequent conduct. If Joan had actually reached safety and then

III. Even if the Availability of a Coercion Defense is Subject to A Continuous Inquiry into the Actor's State of Mind, the State Failed to Prove Beyond a Reasonable Doubt that Joan's Belief that Her Lake House Was Her Only Means of Avoiding Death or Great Bodily Harm Was Unreasonable

If the trial court was right on the timing issue—that applicability of the privilege is assessed on an on-going basis, and lost as soon as Joan had "other alternatives" to continuing to drive—her conduct was still wholly privileged as the State never disproved beyond a reasonable doubt that Joan's going to the cottage was a reasonable belief and conduct. In Joan's mind, there were no alternatives to driving to the lake house. For the entirety of the short time she was driving, she believed that the lake house 15 minutes away from her home was her means of escape. The State failed to prove beyond a reasonable doubt that this belief was unreasonable.

Joan presented evidence of a terrifying course of events on the night in question and proof of decades of being abused and battered. Both Officers testified that, in the 6-8 minutes after she fled for her life Joan was honest and cooperative and that she had traveled the course that she had set when she left the family home. Officer Kuehl testified that Joan appeared afraid of

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subsequently got behind the wheel of her car, that act may certainly have broken her coercion privilege. The test is whether Joan's belief at the time she fled was reasonable under the standard set forth in Wis. Crim JI 790; what would a person of ordinary intelligence and prudence have believed in the defendant's position under the circumstances that existed at the time of the alleged offense while taking into account the reasonableness of the defendant's beliefs determined from the standpoint of the defendant at the time of her acts and not from the viewpoint of the factfinder at the time of the trial.

her husband and that "she was just trying to get out of there." (R125/28:8-9). Dr. Hanusa testified to a reasonable degree of professional certainty as to the impact the years of abuse and battering have on battered women who live in fear and look for safety as an overriding concern.

The trial court's focus was erroneously focused on whether driving to the lake was Joan's only means of escape. That under a plain needing of Wis. Stat. § 939.46(1) is not the issue. The issue is whether *Joan* at the time that she fled had a reasonable belief that the path she chose was the safe path. Even on a purely objective basis—that her home was in an isolated area, it was 2:15 a.m. and she was barely dressed and without a phone or ID—her lake house was her best option to reach safety with the minimal amount of driving. Looking at it from *her standpoint*, including the circumstances she was in and her history, the answer is obvious— Joan acted as a reasonable battered woman would have acted given her circumstances and experiences as they existed in the early morning hours of May 24, 2017.

The only question that could even potentially exist on this point stems from the squad car that Joan passed. This, of course, was the same squad car that was already on the lookout for Joan as a "suspect" because her abuser had falsely alerted the police to Joan. Twice before law enforcement had mistakenly arrested Joan because they had been manipulated by Bill. That being the case, the squad car was not a source of safety but, *in Joan's mind*, the squad car

was a threat. Just minutes earlier Bill had taunted Joan that he would call the police and they same result would end up as before – Joan being arrested despite Bill violently abusing her. Joan's prior experiences with law enforcement as being a threat made her belief to avoid the threat of the police a reasonable one given her experiences. By applying the wrong legal standard (a reasonable person test), rather than the objective-reasonable person test as set forth in Wis Crim-JI 790, the trial court failed to consider what the squad car represented to Joan – a threat.

Battered woman such as Joan, have two characteristics; 1.) they live in fear, and 2.) they desire to be safe. Joan has lived in fear of Bill for decades and in the early morning hours of May 24, 2017, she lived in fear throughout her escape. Joan sought to go somewhere safe and given Joan's past experiences, going to the police was not a safe choice. During the entire 6-8 minutes that Joan fled in fear, she was in a state of fear and trying to get to the only place she reasonably believed to be safe.

CONCLUSION

Our legislature has made the public policy decision that in the rare case where a person is forced to choose between their life or committing a crime, that person has the privilege to commit the crime. Wis. Stat. § 939.46(1).

Joan Stetzer, a battered woman, chose life by committing the crime of operating a motor vehicle while impaired. Given her life experiences and the life experiences of battered women, Joan's choice of driving the 15 minutes to her cottage, her safe house, was reasonable. It may not have been the choice of many but was made by a battered woman who lives in fear and seeks safety. While a reasonable person may have sought out the police for protection, Joan, based upon her life experiences, reasonably chose not to go to the police as they were a threat (something to fear) based upon Bill's manipulation of the police that morning and on at least two prior occasions.

Joan had, and was legally entitled to, the coercion privilege. As the State did not disprove Joan's coercion defense beyond a reasonable doubt Joan had a complete defense and is entitled to a judgment of acquittal. We respectfully ask this court to Reverse the decision of the Court of Appeals and remand this matter to the circuit court for a judgment of acquittal.

Dated at Waukesha, Wisconsin this 9th day of January, 2025

KUCHLER & COTTON, S.C.

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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 9th day of January, 2025.

Electronically signed by Anthony D. Cotton
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