FILED
02-14-2025
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2023AP874-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JOAN L. STETZER,

Defendant-Appellant-Petitioner.

ON REVIEW FROM A DECISION OF
THE COURT OF APPEALS AFFIRMING A
JUDGMENT OF CONVICTION ENTERED IN
THE WAUKESHA COUNTY CIRCUIT COURT, THE
HONORABLE PAUL BUGENHAGEN, JR. PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

JOSHUA L. KAUL
Attorney General of Wisconsin

JOHN D. FLYNN
Assistant Attorney General
State Bar #1096413

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-7324
(608) 294-2907 (Fax)
flynnjd@doj.state.wi.us

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

Wisconsin statute § 939.46 provides a complete defense to criminal liability when the defendant reasonably believes that they face imminent death or great bodily harm and reasonably believes that committing the crime is the only means of preventing that danger. This is the privilege of coercion.

No person should ever have to endure what Dr. Joan Stetzer has been put through by her husband. There is no question that she is a victim of domestic violence. Being a victim of domestic violence, however, does not broaden the very narrow privilege to commit a crime due to coercion.

The circuit court found that Stetzer's history of abuse and her husband's actions made her beliefs, that she faced a threat of imminent death or great bodily harm and needed to drive away to escape, reasonable despite having consumed wine and a sleeping pill. But it found that as soon as Stetzer saw the police car, she knew that continuing to drive impaired was not the only means to escape imminent death or great bodily harm. At that point, her belief that driving while impaired was her *only* means to escape became unreasonable. Even considering her bad prior experiences with law enforcement, a reasonable person would know that, with an officer present, there was no longer imminent danger of death or great bodily harm.

Driving while impaired is a continuing offense—one that puts unnecessary risk on innocent bystanders[1]—so to be entitled to the privilege of coercion, Stetzer's belief that continuing to drive was the only means to escape imminent death or great bodily harm must remain reasonable. This is

---

[1] *State v. Rutzinski*, 2001 WI 22, ¶ 35, 241 Wis. 2d 729, 623 N.W.2d 516 (quoting *State v. Boyea,* 171 Vt. 401, 409, 765 A.2d 862 (Vt. 2000) ("Indeed, a drunk driver is not at all unlike a "bomb," and a mobile one at that.")).

not arbitrarily sub-dividing a continuing act and assessing reasonableness; it is ensuring that her belief remained reasonable at all times she was committing an offense.

The test for determining the reasonableness of a defendant's beliefs is objective—would a person of ordinary intelligence and prudence have believed the same if placed in the same circumstances? As the circuit court found, Stetzer reasonably believed, based on her history, that she faced imminent death or great bodily harm if she stayed in her house. This made her conduct privileged at its inception, and the State does not dispute that.

However, her beliefs needed to remain reasonable the entire time she was driving under the influence. They did not. At the time Stetzer passed the police car, a person of ordinary intelligence and prudence would have known that they were no longer in imminent danger of death or great bodily harm and continuing to drive was no longer the only option to escape that danger. The circuit court and court of appeals correctly determined that Stetzer was not entitled to the privilege after seeing the police car.

This Court should affirm.

STATEMENT OF THE ISSUES

1. When asserting the privilege of coercion to commit a continuing criminal act, must the defendant's belief that committing the act is the only means to prevent imminent death or great bodily harm remain reasonable for the entirety of the criminal act?

The circuit court answered: Yes.

The court of appeals answered: Yes.

This Court should answer: Yes.

2. Did the circuit court apply the correct legal standard to determine the reasonableness of Stetzer's beliefs?

The court of appeals answered: Yes.

This Court should answer: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests both oral argument and publication, pursuant to Wis. Stat. §§ (Rule) 809.22 and 809.23.

STATEMENT OF THE CASE

A. Police see Stetzer swerve while driving and she is charged with operating while intoxicated.

The State charged Stetzer with operating a motor vehicle while intoxicated as a second offense.[2] (R. 1:1.) In an amended complaint, the State added a charge of operating with a prohibited alcohol content as a second offense when it was determined that her blood alcohol content was .113. (R. 13:2, 4.)

Police dispatch was advised that Stetzer left her house in her car and may be intoxicated, driving towards the town of North Lake. (R. 1:2.) Officer Kuehl made contact with the driver, Stetzer. (R. 1:2.) Stetzer told Officer Kuehl that her husband had thrown her down the stairs and hit her in the face. (R. 1:2.) Stetzer said she was on her way to her family's lake house in Merton. (R. 1:2.) Officer Kuehl "detected an odor of intoxicants" coming from Stetzer. (R. 1:2.)

Stetzer also told Waukesha County Sheriff's Office deputies that her husband had slapped her multiple times

[2] An additional count of disorderly conduct with domestic abuse assessments was also originally charged, but later dismissed. (R. 1:2; 55:2.)

and pushed her down the stairs that night. (R. 1:3.) Ultimately, Stetzer performed poorly on field sobriety tests. (R. 1:3–4.)

B. To support a coercion defense, Stetzer sought to admit other acts of domestic violence by her husband and the testimony of a domestic violence expert.

In anticipation of asserting a coercion defense at trial, Stetzer filed a notice of expert testimony for Dr. Darald Hanusa, a domestic violence expert. (R. 62.) Dr. Hanusa provided a report based on, among other sources of information, his interview with Stetzer. (R. 63.) He detailed her history of growing up in a violent household and her relationship history with her husband, Behlmer. (R. 63:2–5.) He opined that Stetzer expressed symptoms consistent with Post Traumatic Stress Disorder and Battered Woman Syndrome. (R. 63:16.)

Stetzer also sought to admit other acts of violence against her by her husband. (R. 68:1.) Stetzer had an affidavit from her husband admitting to being intoxicated on the night in question, threating Stetzer, slapping her, and shoving her so she fell down a flight of stairs. (R. 68:1.) Her husband also admitted to chasing after her. (R. 68:1.) Because Stetzer would be seeking to assert the privilege of coercion, she sought to admit six other instances of domestic violence by her husband from between 2015 and 2016. (R. 68:1–2.) The State did not object to Stetzer's other acts motion. (R. 69.)[3]

---

[3] The State objected to Dr. Hanusa's testimony on its relevance to whether Stetzer committed the crime of operating while intoxicated, on whether he could give evidence of what Stetzer believed and whether it was reasonable, and on whether Stetzer had pleaded sufficient facts to be entitled to a coercion instruction. (R. 64.) The circuit court's order overruling the State's

C. At trial, Stetzer admitted to the criminal offense, but put on significant evidence about domestic violence to prove that driving away was reasonably her only means of escape.

Officer Kuehl testified that she was advised of a 911 hangup call and, "[a]s information continued to come in," she learned that the caller was reporting "that a female had left the residence" in her car and "was possibly in route to a location in the North Lake and Merton area." (R. 125:18.) Further, "[i]t was believed that the female subject was impaired." (R. 125:18.)

Officer Kuehl went to head off the car, based on where it came from and where it was going. (R. 125:18–19.) She saw the described car, confirmed it was the subject of the call, and followed it. (R. 125:19–20.) She saw the car "weav[e] within its lane," "veer[ ] toward [a] park turn lane, and then self-correct[ ]," and "cross over the solid, white fog line." (R. 125:20.) She continued to follow the car and saw it "cross over solid lines several times." (R. 125:21.) She activated her squad car's emergency lights, and the car stopped. (R. 125:21.) She contacted the driver, Stetzer. (R. 125:22.)

Stetzer told Officer Kuehl "that her husband had thrown her down the stairs at her residence and scratched her face." (R. 125:23, 36–37.) Officer Kuehl asked twice if Stetzer wanted medical attention; the first time Stetzer said maybe, and the second time she did not respond. (R. 125:23–24.) Officer Kuehl smelled "the odor of intoxicants emanating from" Stetzer, and she admitted to having "two glasses of

---

objection does not appear in the record. The State did not cross-appeal the circuit court's decision to admit Dr. Hanusa's testimony and, therefore, for purposes of this case, the State concedes that the factfinder could consider it.

wine." (R. 125:24.) Stetzer said "she was going to their second residence, which was the North Lake property, or the lake house." (R. 125:24.) Stetzer did "[n]ot directly say that she feared for her life," but, to Officer Kuehl, "[i]t appeared that she was afraid of her husband." (R. 125:28, 38.)

Waukesha County Sheriff's Office Deputy Dominguez testified that he responded to Stetzer's residence and spoke with Behlmer. (R. 125:46, 64.) Behlmer told him that Stetzer was possibly going to their North Lake residence and "might have possibly been drinking and on medication before she left." (R. 125:47.)

Deputy Dominguez left the residence to go to the scene of the traffic stop. (R. 125:47–48.) Stetzer told Deputy Dominguez "that there had been a physical altercation at her residence." (R. 125:49, 68.) Stetzer described a verbal argument that became physical when her husband slapped her and pushed her down the stairs. (R. 125:69–70.) She again admitted to drinking wine and told Deputy Dominguez that she had taken a sleeping pill. (R. 125:49–50.)

Deputy Dominguez smelled a moderate "odor of intoxicants while speaking with Ms. Stetzer." (R. 125:50.) He also observed that "[h]er speech was slightly slurred. Her balance was - - she was able to balance, but it was very difficult for her to balance. She swayed while speaking." (R. 125:50.) Deputy Dominguez asked Stetzer to perform field sobriety tests. (R. 125:50–51.) She exhibited clues of impairment on all three tests conducted. (R. 125:53–58.) Deputy Dominguez arrested Stetzer for operating while intoxicated. (R. 125:58–59.) He obtained a warrant to draw Stetzer's blood, which was done at a hospital. (R. 125:60.) At the hospital, Stetzer complained of chest pain, difficulty breathing, and pain in her left arm. (R. 125:76.)

The parties stipulated that Stetzer's blood alcohol concentration was over the .08 limit at the time of the driving. (R. 125:78–81.)

Stetzer testified that she grew up seeing domestic violence in the home. (R. 124:4–5.) She "got in the middle of some of [her parents'] arguments and got hurt." (R. 124:5.) Her marriage to Behlmer took a turn for the worse after their third child was born, who has special needs. (R. 124:11–12.) It started with Behlmer overreacting to things but escalated to physical violence. (R. 124:12–13.) In January 2015, she discovered Behlmer had multiple affairs, and that is when the physical abuse began. (R. 124:14.) Since 2015, she had moved out to the lake house a number of times, for up to eight months at a time. (R. 124:16.) She described the six incidents from her pre-trial other acts motions. (R. 124:21–42.) She also described instances of sexual abuse where Behlmer would not stop when asked and how he gave her two sexually transmitted infections. (R. 124:33–34.) She felt embarrassed to seek medical treatment because of her professional connections. (R. 124:42–43.)

Stetzer did not dispute that she drank and drove on the night she was arrested. (R. 124:43–44.) She acknowledged having "a couple of glasses of wine" while making dinner and "at least one more at dinner." (R. 124:52, 116.) That evening, an argument started about Behlmer's affairs. (R. 124:48–49, 116.) Behlmer escalated the argument by "push[ing] her in the shoulders a couple of times," grabbing her arm, and verbally abusing her. (R. 124:50.) Behlmer left the house. (R. 124:51–52, 116.) Stetzer threw his clothes out in the backyard and texted him to "come pick them up and get out." (R. 124:54–55, 117.) Her daughter "had already told [Behlmer] that [Stetzer] had thrown his clothes" on the patio. (R. 124:117.)

Stetzer was asleep when Behlmer arrived back at the house, and he was "yelling and screaming and swearing." (R. 124:56, 116, 118–19.) She was clad only in "a T-shirt and like pajama shorts." (R. 124:56.) He was yelling at her to pick up his clothes and "get the hell out of here." (R. 124:57.) Behlmer was saying that he was going to "take [her] out if [she didn't] do it," which she thought meant Behlmer was going to kill her. (R. 124:57–58.) She was standing in front of the basement door, when Behlmer came up from the basement, and then Behlmer used his elbow to shove her down the stairs. (R. 124:58–60, 121.) After she fell down the stairs, Stetzer stated that she was in pain, and then went back upstairs and started drinking "two large pour glasses of wine." (R. 124:60–61, 117, 121.)

Behlmer continued to yell at her, she then left the house, but then went back inside. (R. 124:62–65.) Behlmer was hanging up the phone, yelled at her to get out, and ran at her with a closed fist. (R. 124:65.) He got a heavy pot and ran after her. (R. 124:65.) Stetzer ran out of the house again. (R. 124:65.) Behlmer threw the pot at her. (R. 124:65, 67–68.) Stetzer was able to get into a vehicle, which had the keys in it, and lock herself inside. (R. 124:66.) Behlmer was pounding on the car window. (R. 124:66.) Stetzer then left the residence in her vehicle. (R. 124:66.) She believed that Behlmer was chasing after her; she saw headlights behind her all the way to where she turned in front of Officer Kuehl and thought it was Behlmer. (R. 124:67, 70–71, 131.) She felt she did not have any alternative but to go to her lake house and did not see any open businesses. (R. 124:69, 73–74.) Stetzer admitted to seeing the squad car before she was pulled over, but did not stop because when she called police previously on Behlmer, she had been arrested. (R. 124:72–73.)

After being arrested and taken to the hospital, Stetzer was treated. (R. 124:86.) She testified about her medical records and the tests that were run. (R. 124:86–97.)

Dr. Hanusa testified about domestic violence and how when a victim does not feel safe "it really changes [their] entire perspective of real[i]ty." (R. 125:90.) Victims are "put[ ] in a position where [they] can't respond in a way that a reasonable person would respond under similar situations." (R. 125:90.) Victims of domestic violence perceive threats differently. (R. 125:91.) Sometimes, victims self-isolate because they do not want others knowing about their abuse. (R. 125:93, 109, 114.) Abuse comes in different forms. (R. 125:94–103.)

Dr. Hanusa discussed the power and control wheel of different abusive behaviors and how abusers will use various behaviors to accomplish the control they desire. (R. 125:106–107.) He also described the cycle of abuse—different phases common in abusive relationships of how abusive behavior escalates until an incident and then contrition until the pattern begins again. (R. 125:108.) This pattern can cause a trauma bond between victim and abuser. (R. 125:120–122.)

Dr. Hanusa discussed the report he prepared after interviewing Stetzer. (R. 125:131.) At issue in the case was "not so much the impairment but why . . . Dr. Stetzer left the house." (R. 125:133.) The point was to look at whether domestic violence happened and how it informed the choices Stetzer made. (R. 125:135–36.)

Stetzer told him she grew up in a house where "her father was very abusive to her mother." (R. 125:136.) Based on her statements, he concluded that she suffered significant or extreme childhood trauma. (R. 125:137.) She described physical, psychological, and sexual abuse in her relationship with her husband. (R. 125:137–38.) She also thought that her husband "was purposely unemployed and put her in a position

of having to be the primary income earner." (R. 125:139.) Based on Stetzer's answers to the woman abuse scale, Dr. Hanusa concluded that "it certainly appears as if there is ample evidence to suggest, in fact, that Joan has been the recipient of domestic violence in her relationship with her partner." (R. 125:142.) In Behlmer's responses to the woman abuse scale questions, his answers were "remarkably similar" to Stetzer's, and he admitted to most of the conduct. (R. 125:143–44.)

In response to another test, Stetzer "scored in a way that identified significant paranoia." (R. 125:145.) Her answers indicated a high "danger of severe violence and perhaps homicide." (R. 125:146, 152.)

Dr. Hanusa diagnosed Stetzer with post-traumatic stress disorder and battered woman syndrome, which is "an extension of PTSD." (R. 125:154–55.)

Victims of abuse "find themselves in a fight, flight, or freeze situation, depending on what's going on, depending on their assessment of their danger, depending on whether or not they believe there's a way for them to escape." (R. 125:158.) Fear being "the primary motivator that drives a victim's decision." (R. 125:158–59.)

Dr. Hanusa's essential point was that "when Joan's in her car and he's banging on the window presents a classic dilemma for her." (R. 125:190.) "Had he not been pounding on the door, had he not been abusive to her," Dr. Hanusa did not "think she would've gotten in the car and driven that night." (R. 125:191.)

Behlmer testified that he and Stetzer had an argument about Behlmer's affairs that night, and he eventually left the house. (R. 125:194, 213.) He did not want to come back to the house where Stetzer was but did so after his daughter called him and stated that Stetzer threw all his clothes out in the rain. (R. 125:194, 213.) He was upset with Stetzer because of

that and confronted her. (R. 125:195.) Stetzer and Behlmer got into a verbal argument. (R. 125:196–97, 216.) Behlmer shoved and pushed Stetzer as he was trying to get by her since she was blocking his way, and she then fell down the stairs. (R. 125:199.) Behlmer said he would "kick [Stetzer's] fucking ass." (R. 125:201.) Behlmer said he accidentally called 911 and was taunting Stetzer. (R. 125:201.) Stetzer left and then came back inside, and that is when he chased her with a metal pot. (R. 125:202.) He "whipped the pan . . . at the part of the wall between the garage door and the wall." (R. 125:204, 222–23.) He chased Stetzer around "the truck." (R. 125:204.) Stetzer got into a vehicle, and he was banging on the windows. (R. 125:204–05, 223.) Stetzer pulled away. (R. 125:204.) Behlmer admitted to being physically abusive 15 times and verbally abusive hundreds of times. (R. 125:206–07.) He admitted he lied to police that evening, wanting "to just, like, smooth it all over." (R. 125:208, 227.)

D. The circuit court found the privilege of coercion available to Stetzer when she left the house, but she lost the privilege once she knowingly passed the police car and did not stop driving.

The circuit court noted that Stetzer admitted to driving, admitted to being under the influence, and stipulated to her blood alcohol concentration. (R. 124:169.) It found the law enforcement officers and Stetzer credible. (R. 124:169–70.)

The circuit court acknowledged that the central issue in the case was whether coercion applied. (R. 124:170.) It correctly noted the statute and the State's burden to disprove coercion beyond a reasonable doubt. (R. 124:170.)

The circuit court found Stetzer guilty because when she passed the police car, she knew she had an alternative to continuing to drive impaired:

I do not find that the defense applies because of the timing issue. The Court can take everything as true up to the time that Dr. Stetzer leaves the driveway. Everything that was testified to by her, by the other witnesses can be exactly true. I can take that in the light most favorable to her all the way to that point, and it is awful that she's had to go through that and found herself in that position that night. The crux of this is the defense only goes so far. It allows that it is the only means of preventing great bodily harm to her.

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. In fact that's -- looking at it reasonably that's not a good idea to be going there. The –

Beyond a reasonable doubt she passed a police officer. The – It's circumstantial evidence as to whether what her observations were, but she was clearly driving. She passed a police officer. She's in a city she knows. So beyond a reasonable doubt she knows there's other means of safety around other than going to the lake house where yes I understand she testified that there are other -- there are ways of securing it. Again, looking at it reasonably the same danger that she would have been in the driveway could have existed over at that home-- the other home on the lake.

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. I can't take sympathy and say I don't want Dr. Stetzer to be in this position because it's unfair. She shouldn't have been in that position.
>
> 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.
>
> 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 that 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 that 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 the -- So as to Counts 1 and 3 I do find her guilty.

(R. 124:169–73.)

E. The court of appeals affirmed, holding that a defendant's belief that committing the crime is the only means of preventing imminent death or great bodily harm must be reasonable for as long as the crime continues.

Stetzer appealed, arguing that the circuit court misapplied the law by shifting the burden of proof. (A-App. 9.) Under a de novo standard of review for whether the circuit court applied the correct legal standard, the court of appeals affirmed. (A-App. 3–4, 9–10.) It noted that the circuit court

"correctly articulated the defense and correctly stated that it was the State's burden to prove, beyond a reasonable doubt, that the elements of this defense were not met." (A-App. 10.) It held that "the defense requires both a reasonable belief that the actor is in imminent danger of death or physical harm *and* a reasonable belief that the otherwise illegal action is the actor's only means of escape." (A-App. 10.)

The court of appeals compared coercion to the analogous privilege of self-defense to hold that "the commission of the criminal act" cannot "go on longer than reasonably necessary to escape imminent death or great bodily harm." (A-App. 11.)

The court of appeals found an unpublished but authored decision persuasive. It was also an OWI case with a coercion defense. (A-App. 11.) There, the court of appeals held that:

> . . . no reasonable factfinder could find that it was reasonable for the defendant to believe that driving all the way to his house was the only way to avoid death or bodily harm, noting that the defendant could have called the police, stopped at a closer-by public place or farmhouse, or had a sober passenger take over driving before the point at which he was stopped.

(A-App. 11.)

In Stetzer's case, she had "not acknowledge[d] or address[ed] the court's explicit factual finding that" when she passed the police officer, she knew there was another "means of safety around other than [continuing on and] going to the lake house." (A-App. 12.) This finding was not inconsistent with the finding that the initial decision to leave the house was privileged. (A-App. 12.) The court of appeals reasoned that "the codified coercion defense requires a reasonable belief, at every moment that the defendant is asserting she was coerced to engage in otherwise criminal conduct, that the otherwise criminal conduct is the *only* way to prevent death

or bodily harm." (A-App. 12.) "[T]he evidence in the Record d[id] not show that Stetzer *continued* to hold a reasonable belief that, once she was out of her husband's immediate vicinity, driving on to [the lake house] was 'the only means of preventing imminent death or great bodily harm.'" (A-App. 14.) None of the evidence about Stetzer's past or "any other evidence in the Record, suggests that Stetzer's history of abuse or 'adverse relationship with the police' (as her expert put it) led to a reasonable belief that she would still be at risk of 'imminent death or great bodily harm' in the police's presence." (A-App. 15.)

Stetzer petitioned for review, and this Court granted review on two legal issues.

STANDARD OF REVIEW

Determining "whether the circuit court applied the correct legal standard . . . is a question of law we review de novo." *State v. Magett*, 2014 WI 67, ¶ 27, 355 Wis. 2d 617, 850 N.W.2d 42 (citation omitted). To the extent that answering this question involves interpreting Wis. Stat. § 939.46(1), "[t]he interpretation and application of constitutional and statutory provisions are questions of law that [this Court] review[s] de novo." *State v. Alexander*, 2013 WI 70, ¶ 18, 349 Wis. 2d 327, 833 N.W.2d 126.

ARGUMENT

I. The circuit court correctly concluded that Stetzer lost her privilege to continue to drive when she passed the police car because her beliefs had to remain objectively reasonable the entire time she was driving while impaired.

A. Coercion is a privilege available when a defendant reasonably believes they are in imminent danger of death or great bodily harm and committing the crime is the only means of preventing that danger.

Under Wis. Stat. § 939.45(1), criminal conduct is privileged when it "occurs under circumstances of coercion" as set forth in Wis. Stat. § 939.46. Coercion is

> [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 . . .

Wis. Stat. § 939.46(1) (emphasis added).

The coercion defense is limited to the most severe form of inducement. *State v. Keeran*, 2004 WI App 4, ¶ 5, 268 Wis. 2d 761, 674 N.W.2d 570 (citing *State v. Amundson*, 69 Wis. 2d 554, 568, 230 N.W.2d 775 (1975) *overruled on other grounds by State v. Wayerski*, 2019 WI 11, 385 Wis. 2d 344, 922 N.W.2d 468). The defense of coercion "reflect[s] the social policy that one is justified in violating the letter of the [criminal] law in order to avoid death or great bodily harm." *State v. Horn*, 126 Wis. 2d 447, 455, 377 N.W.2d 176 (Ct. App. 1985); *see also State v. Brown*, 107 Wis. 2d 44, 54–55, 318 N.W.2d 370 (1982).

Once a defendant puts on some evidence that they were coerced into committing the charged offense, the State must prove beyond a reasonable doubt that the privilege does not apply. *Keeran*, 268 Wis. 2d 761, ¶ 5; *Amundson*, 69 Wis. 2d at 566–67.

The court of appeals has explained the import of the statutory language "only means." In *Keeran*, Keeran sought a coercion instruction as a defense to various crimes he committed, which included striking the victim with a bat resulting in death. *Keeran*, 268 Wis. 2d 761, ¶¶ 1–3. The circuit court did not give the coercion instruction, finding that Keeran failed to produce some evidence that "he had no 'means of preventing imminent death or great bodily harm' to himself, except by participating in the crimes." *Id*. ¶ 7 (citation omitted).

The court of appeals affirmed because "Keeran needed to provide details explaining why his only means of preventing Barreau from inflicting on Keeran 'imminent' death or great bodily harm was to participate in the crimes." *Id*. ¶12. Keeran did not explain why he

> could not have gone into his home and telephoned the police or run out the back door; no explanation as to why Keeran could not have excused himself to use the bathroom at the gasoline station and then taken refuge in that station with witnesses present;[ ] no explanation as to why Keeran could not have fled the car at a busy intersection in Madison; and no explanation as to why Keeran could not have fled from Barreau while walking for two hours.

Id.

The court of appeals accepted that "Keeran reasonably believed that Barreau would attempt to harm Keeran if Keeran did not comply." *Id*. ¶ 15. "But that only suggests that Keeran's *safest* course was to comply with Barreau's orders; it does not mean that Keeran's *only* course was to comply with

Barreau's orders. The coercion defense is not a license to take the safest course." *Id.*

"Coercion is highly analogous to the privilege of self-defense, both of which look to the reasonableness of the actor's belief that his only safe recourse is the commission of a criminal act."[4] *Amundson*, 69 Wis. 2d at 568. "It requires an additional finding, under the objective-reasonable [person] test, with regard to the reasonableness of the actor's beliefs that he is threatened with immediate death or great bodily harm with no possible escape other than the commission of a criminal act." *Id.* Thus, the defense requires both a reasonable belief that the defendant is in imminent danger of death or great bodily harm and a reasonable belief that the otherwise illegal action is the actor's only means of preventing that danger. *Id.*

B. When asserting coercion as a privilege to commit a continuing offense, a defendant's beliefs must remain reasonable for the duration of the offense.

1. Because driving while impaired is a continuing offense, a defendant's beliefs regarding coercion must remain reasonable.

Most criminal acts are instantaneous. As in, "all the elements necessary for its completion occur within a relatively short period of time and the criminal objective is speedily obtained." *John v. State*, 96 Wis. 2d 183, 188, 291 N.W.2d 502 (1980). Other crimes are continuing offenses, meaning "a course of conduct enduring over an extended period of time." *Id.* Importantly, an offense can be a

[4] The statute for self-defense and defense of others also requires that the defendant's beliefs must be reasonable. Wis. Stat. § 939.48(1). *See also infra*, sec. II.B.

continuing offense "[e]ven if the initial unlawful act may itself embody all of the elements of the crime." *Id.*

So, for example, in a welfare fraud case, the crime continues until the final act, the last receipt of welfare benefits. *Id.* at 190–91. Further, in the identity theft context, a person who uses another's identity to secure employment commits a continuing violation so long as the person receives wages or other benefits from the employment. *State v. Ramirez*, 2001 WI App 158, ¶ 17, 246 Wis. 2d 802, 633 N.W.2d 656. And unauthorized use of personal identifying materials by opening multiple credit cards is a continuing offense until the accounts are closed. *State v. Lis*, 2008 WI App 82, ¶¶ 8, 15, 311 Wis. 2d 691, 751 N.W.2d 891.

While the term "continuing offense" is normally applied to determine when a statute of limitations begins to run or whether multiple crimes are appropriate,[5] it logically applies here.

Some crimes committed due to coercion will be instantaneous—being forced to commit criminal damage to property, for one example. Other crimes initially committed due to coercion will be continuing offenses. For instance, being

---

[5] *John v. State*, 96 Wis. 2d 183, 188, 291 N.W.2d 502 (1980) (holding that the statute of limitations runs from the last act of the continuing offense). *See also State v. Holder*, 2011 WI App 116, ¶ 13, 337 Wis. 2d 79, 803 N.W.2d 82 (where one continuous act of driving properly supported two criminal offenses because the defendant made a conscious decision to keep driving into Wisconsin from Michigan). The State does not suggest that it could have charged Stetzer with multiple OWI offenses for this single, continuing offense. However, as Stetzer concedes, (Stetzer's Br. 28 n.2.), if she had stopped driving when she "reached safety" but began driving again, her second instance of driving impaired would not be privileged. It would also be a separate continuing offense that would support a separate charge of operating while intoxicated.

coerced into committing a false imprisonment continues for as long as the victim is falsely imprisoned.

Operating while intoxicated is a continuing offense. All of the elements of the offense will be present as soon as the defendant starts operating the vehicle, but the offense will continue as long as the vehicle is being operated.[6] *John*, 96 Wis. 2d at 188.

Logically, to be privileged to continue committing a continuing offense, a defendant's beliefs regarding coercion must remain reasonable for the entire duration, or else the defendant must cease committing the crime. The defendant must reasonably believe that committing the offense is the only means of preventing imminent death or great bodily harm for the entire time they are committing the offense. If the threat has abated or if there is another way to prevent the threat, the defendant must cease committing the crime.

This concept is illustrated in this Court's explanation of the privilege for felons to possess a firearm in self-defense. *State v. Coleman*, 206 Wis. 2d 199, 210–12, 556 N.W.2d 701 (1996). To be entitled to possess a firearm as a felon, a defendant must show, among other requirements, that they "did not possess the firearm for any longer than reasonably necessary." *Id*. at 211.

Relatedly, a defendant does not have a privilege to use force in defense of others if the "threat of imminent death or great bodily harm . . . ha[s] passed." *State v. Jones*, 147 Wis. 2d 806, 815, 434 N.W.2d 380 (1989).

Consistent with *Coleman* and *Jones*, a person can be privileged to commit an offense, but not for longer than reasonably necessary—when the threat of imminent death or great bodily harm has passed, or another option presents itself. For the duration of a continuing offense, the defendant's

---

[6] Or perhaps if a defendant no longer is intoxicated.

beliefs that they face imminent death or great bodily harm and that committing the crime is the defendant's only means of preventing that danger must remain reasonable. When the defendant no longer reasonably believes that the danger is imminent, they must stop committing the crime. Or as soon as there is another option to prevent the danger short of committing the crime, the defendant must take it.

Stetzer's position is that as long as an action was privileged at its inception, it remains privileged throughout its duration. (Stetzer's Br. 25.) Stetzer argues that the requirement that a defendant reasonably believe that committing a crime is the only means of avoiding imminent death or great bodily harm "is a finding precedent to the determination that coercion existed." (Stetzer's Br. 25.) If an action is privileged at its inception, the statute provides a complete defense to the entire action. (Stetzer's Br. 27.) This cannot be how the law works and is inconsistent with precedent. *Coleman*, 206 Wis. 2d at 210–12; *Jones*, 147 Wis. 2d at 815.

Stetzer's proposed construction has no limiting principle. It would, in effect, be up to the defendant to decide whether and when to stop committing the continuing offense. While the State does not dispute that Stetzer was driving to her lake house, by her own formulation of the privilege, it would make no difference if she had intended to drive to another state. The circuit court shared this concern. (R. 124:172–73.) Stetzer's construction is not a reasonable reading of the statute. The statute's plain language contains limiting principles—"imminent" and "only means." Wis. Stat. § 939.46(1).

The only reasonable interpretation of the coercion statute is that, for a continuing offense, a defendant's beliefs regarding coercion must remain reasonable throughout the duration of the offense. This comports with how narrow the privilege is and with Wisconsin's treatment of the "highly

analogous" self-defense privilege. *Amundson*, 69 Wis. 2d at 568. Stetzer argues that coercion is available because it is a lesser evil done to prevent a greater evil. (Stetzer's Br. 26–27.) While the State agrees, once the greater evil is no longer imminent, the privilege ends and only the lesser evil—driving impaired—remains. *See Keeran*, 268 Wis. 2d 761, ¶ 5.

Emerging facts discovered during the commission of the offense can make a defendant's beliefs regarding coercion unreasonable. Here, when Stetzer knowingly passed the police car, her beliefs that she faced imminent death or great bodily harm and that continuing to drive was her only means of escaping that harm became unreasonable. Because the circuit court correctly applied the law by considering whether Stetzer's beliefs became unreasonable as she continued to drive drunk, this Court should affirm.

2. This is not a *Kizer* case, and its reasoning does not apply here.

Stetzer has cited *Kizer* in her brief. (Stetzer's Br. 22–23.) *State v. Kizer*, 2022 WI 58, 403 Wis. 2d 142, 976 N.W.2d 356. However, this is not a *Kizer* case. Stetzer has not made a claim under this different subsection or claimed she was trafficked. *Kizer* has no application to this case.

A different subsection of the coercion privilege statute provides "victims of human trafficking or child sex trafficking have 'an affirmative defense for any offense committed as a direct result' of the trafficking." *Id.* ¶ 1 (quoting Wis. Stat. § 939.46(1m)). Kizer's case was pre-trial and concerned whether this privilege for trafficking victims was available at all to her. *Id*. ¶¶ 4–5. This Court held that the privilege applies to any criminal act "so long as there is still the necessary logical connection between the offense and the trafficking." *Id*. ¶ 15.

Kizer has no bearing on this case. The different statute subsection does not even have a reasonableness requirement. Wis. Stat. § 939.46(1m). While Stetzer is absolutely the victim of many crimes of domestic abuse, none of the evidence established that she was the victim of human trafficking. Stetzer herself does not attempt to claim she was privileged in her actions under Wis. Stat. § 939.46(1m). *Kizer* is therefore inapposite.

C. If Stetzer is correct, then her remedy is retrial, not an acquittal.

As a final aside on this issue, Stetzer requests, as a remedy, that this Court reverse the court of appeals and remand with instructions for the circuit court to enter a judgment of acquittal. (Stetzer's Br. 32.) If the circuit court applied the incorrect legal standard, that would be the equivalent of a trial court incorrectly instructing the jury. *Shepard v. United States*, 544 U.S. 13, 20 (2005) ("In cases tried without a jury, the closest analogs to jury instructions would be a bench-trial judge's formal rulings of law and findings of fact."). When the jury has been incorrectly instructed, the remedy is vacating the judgment of conviction and remanding for a new trial if the error was prejudicial. *State v. Langlois*, 2018 WI 73, ¶ 48, 382 Wis. 2d 414, 913 N.W.2d 812. If Stetzer is correct and only her initial beliefs control whether her entire course of conduct was privileged, then the circuit court erred. *Id*. Given that the circuit court's consideration that Stetzer lost her privilege to drive impaired when she saw the police car was central to its finding of guilt, the State would concede that prejudice exists if Stetzer is correct, and a new trial would be warranted. *Id*.

II. The circuit court correctly applied the objective, reasonable person standard when assessing the coercion defense.

Stetzer does not meaningfully develop an argument on the second issue. Stetzer has not developed an argument for why the circuit court was obligated to consider her particular characteristics or personal history under the objective, reasonable person standard, she just assumes that it was. She cites no authority, besides a jury instruction, and she cites to the record only once. (Stetzer's Br. 29–31.) This does not comply with the rules of appellate procedure, which require both citations to the authority and the record. Wis. Stat. § (Rule) 809.19(1)(e). This Court can affirm the circuit court without engaging with the argument. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (reviewing courts need not address undeveloped arguments); *Lechner v. Scharrer*, 145 Wis. 2d 667, 676, 429 N.W.2d 491 (Ct. App. 1988) (reviewing court need not address arguments unsupported by references to the record).

Nonetheless, the circuit court correctly considered whether Stetzer's beliefs—that she faced imminent death or great bodily harm and that driving while impaired was her only means of preventing that harm—were objectively reasonable.[7] It also correctly declined to consider such personal history evidence when asking whether Joan's subjective belief was objectively reasonable.

---

[7] This Court granted review of the legal question of whether the circuit court applied the correct standard of law when it failed to consider the reasonableness of Stetzer's decision not to stop for police considering her "particular characteristics and personal history." (2024-12-10 Court Order, p. 1.) Stetzer improperly frames this question as a sufficiency issue: whether "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." (Stetzer's Br. 29.)

A. The reasonableness of a defendant's beliefs when asserting a privilege is judged by a person of ordinary intelligence and prudence.

This Court has already articulated that, to obtain the defense of coercion, the defendant's beliefs must be objectively reasonable. *Amundson*, 69 Wis. 2d at 568. The factfinder applies an objective standard when it assesses the reasonableness of the defendant's beliefs. "'Reasonably believes' means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable even though erroneous." Wis. Stat. § 939.22(32).

Coercion requires a "finding, *under the objective-reasonable [person] test*, with regard to the reasonableness of the actor's beliefs that he is threatened with immediate death or great bodily harm with no possible escape." *Amundson*, 69 Wis. 2d at 568 (emphasis added). "[T]he determination of reasonableness is 'peculiarly within the province of the'" factfinder. *Jones*, 147 Wis. 2d at 816 (quoting *State v. Mendoza,* 80 Wis.2d 122, 156, 258 N.W.2d 260 (1977)).

The jury instruction for coercion provides that "[i]n determining whether the defendant's beliefs were reasonable, the standard is 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." Wis. JI-Criminal 790 (2005).

As noted, "[c]oercion is highly analogous to the privilege of self-defense." *Amundson*, 69 Wis. 2d at 568. They both apply an objective standard of reasonableness. *Id.* A "defendant claiming perfect self-defense has to meet the same 'some'-evidence standard, but her evidence would be measured against an objective reasonable threshold." *State v. Head*, 2002 WI 99, ¶ 125, 255 Wis. 2d 194, 648 N.W.2d 413.

The court of appeals has explained that "there is both a subjective component to self-defense–that is, the defendant must actually believe he or she was preventing or terminating an unlawful interference; and an objective threshold component–that is, the belief must be reasonable." *State v. Hampton*, 207 Wis. 2d 367, 380–81, 558 N.W.2d 884 (Ct. App. 1996). "The reasonableness of the belief is judged from the position of 'a person of ordinary intelligence and prudence' in the same situation as the defendant, not of a person *identical* to the defendant placed in the same situation as the defendant." *Id.* at 381 (emphasis added) (citation omitted). The court of appeals called this "common sense[,] because otherwise the privilege of self-defense would vary depending on the background or personal history of the person attempting to exercise the privilege." *Id.* Thus, in *Hampton*, the court of appeals held that the circuit court did not err when it excluded Hampton's psycho-social evidence because it was not relevant to whether Hampton's beliefs were objectively reasonable. *Id.* at 382.

B. The circuit court correctly applied the law to determine the reasonableness of Stetzer's beliefs, using the objective reasonable person standard.

The circuit court applied the correct legal standard. The circuit court found that Stetzer reasonably, and actually, believed that she faced imminent death or great bodily harm from her husband, satisfying the subjective aspect of the reasonability test. (R. 124:170–73.) It found that she reasonably believed that driving was the only means of escaping that danger. (R. 124:170–73.) In making its decision, the circuit court correctly pointed out that it was considering her situation from the perspective of "a reasonable person of ordinary intelligence and prudence." (R. 124:171.) It therefore correctly applied the ordinary reasonable person test. *Amundson*, 69 Wis. 2d at 568.

The circuit court found that Stetzer was privileged to drive to escape her husband. (R. 124:170.) The State agrees. However, the circuit court further found "once she's out of the driveway she has more options." (R. 124:171.) And in particular, "[b]eyond a reasonable doubt she passed a police officer . . . So beyond a reasonable doubt she knows there's other means of safety around other than going to the lake house." (R. 124:171.)

Stetzer's belief that she faced imminent death or great bodily harm and her belief that continuing to drive was her only way to escape became no longer objectively reasonable when she passed the police officer. The imminent threat of death or great bodily harm is not reasonably believed when a law enforcement officer is present; to be reasonable, it would have to be assumed that a law enforcement officer would stand idly by rather than stop a murder from happening in front of him. To the contrary, a reasonable person would expect that an officer would intervene if one person was threatening death or great bodily harm to another in their presence.

Similarly, Stetzer's belief that continuing to drive was her only means of escaping danger was not reasonable because she objectively knew she could stop and report her husband's actions. She testified that she thought about it. (R. 124:72–73.) She elected not to because of her prior experiences with law enforcement where she was arrested instead of Behlmer. (R. 124:72–73.) This reasoning undermines the reasonableness of her belief that she had no choice other than continuing to the lake house. It was an option short of continuing to endanger public safety by driving impaired that she knew about. Her reason for not taking the option is not grounded in her fear of imminent death or great bodily harm, it is based on her prior experience. For coercion to apply, breaking the law must be the only option, not just

the option the defendant wants to take. *Amundson*, 69 Wis. 2d at 568.

Stetzer argues that "[t]he issue is whether *Joan* at the time that she fled had a reasonable belief that the path she chose was the safe path." (Stetzer's Br. 30.)[8] She does not cite any authority for this proposition. She asserts that she "acted as a reasonable battered woman would have acted given her circumstances and experiences as they existed." (Stetzer's Br. 30.) But that is not what the law asks of the factfinder. The defense must be subject to an objective reasonability component that disregards her personal history because otherwise the privilege would be available to any defendant who professes their subjective beliefs.

But even if Stetzer is correct that the reasonability of her beliefs must take into account her personal life history, that still does not overcome the fact that she knew she had an option short of continuing to drive. As a matter of law, if there is an available option short of committing a crime, the defendant must take it. *Keeran*, 268 Wis. 2d 761, ¶ 15.

Finally, as with the prior issue, if the circuit court applied the incorrect legal standard, Stetzer's remedy would be a new trial, not an acquittal. *Langlois*, 382 Wis. 2d 414, ¶ 48.

The circuit court applied the correct legal standard to determine whether Stetzer's beliefs were reasonable. It reasoned whether a person of ordinary intelligence and prudence would have believed that they faced a threat of

---

[8] Stetzer argues that the State did not disprove coercion beyond a reasonable doubt. (Stetzer's Br. 29–31.) That is not the issue that was presented in her petition for review or granted review by this Court. To the extent that this phrasing of the issue challenges the sufficiency of the evidence, that would be reviewed under the deferential standard articulated in *State v. Poellinger*, 153 Wis. 2d 493, 451 N.W.2d 752 (1990). But, again, Stetzer has cited no authority in this section.

imminent death or great bodily harm and that continuing to drive was their only option to escape the danger. It found against Stetzer, and its reasoning was correct.

CONCLUSION

This Court should affirm.

Dated this 14th day of February 2025.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

John D. Flynn
JOHN D. FLYNN
Assistant Attorney General
State Bar #1096413

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-7324
(608) 294-2907 (Fax)
flynnjd@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 7,920 words.

Dated this 14th day of February 2025.

Electronically signed by:

John D. Flynn
JOHN D. FLYNN
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the Clerk of the Wisconsin Supreme Court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 14th day of February 2025.

Electronically signed by:

John D. Flynn
JOHN D. FLYNN
Assistant Attorney General