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CIRCUIT COURT
DANE COUNTY, WI
2021CF001839

STATE OF WISCONSIN **CIRCUIT COURT BRANCH 7** **DANE COUNTY**

STATE OF WISCONSIN
Plaintiff,

Court Case No.: 2021CF001839

vs.

Paul D Picklesimer
Defendant,

For Official Use

STATE'S RESPONSE TO THE DEFENDANT PAUL PICKLESIMER'S MOTIONS IN LIMINE

The State herein responds to the defendant Paul Picklesimer's motions in limine filed on March 1, 2024. The State asks the Court to deny the defendant's motions because they are without legal merit.

To respond generally, the present motions are disturbing attempts by the defendant to convert this criminal proceeding into an illegal and shameful publicity event. This is not a public hearing without rules where parties can invent legal mechanisms to publicize their general grievances against other persons or commercial entities. This is a criminal action where the defendant is accused of serious crimes. What concerns the State is that nothing filed bears any legal or factual relationship to this case.

MOTION FOR JUDICIAL NOTICE

The defendant has asked this Court to take judicial notice of certain documents, including USDA inspection records assumedly related to the victims in this matter[1], State of Wisconsin Department of Agriculture records, and "records from various universities related to the purchase of dogs from [the victim]". Dkt. 73 p. 2.

[1] While the defendant generally describes the documents he wishes to admit through judicial notice and notes that they are exhibits, the State possesses no exhibits from this defendant and none are recorded in the Court's docket.

The defendant grossly misunderstands the concept of judicial notice under Wisconsin law. Under Wis. Stat. § 902.01, certain basic facts may be taken as judicial notice by the court in legal proceedings, provided that they are generally known facts in this territorial jurisdiction, facts that are capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned, and well known and obvious. Wis. Stat. § 902.01(2)(a,b); *International Harvester Co. v. Industrial Commission of Wisconsin*, 157 Wis. 167 (Wis. 1914). The proffered facts must have verifiable certainty. *State v. Hinz*, 121 Wis. 2d 282 (Ct. App. 1984). The proffered facts must also be not contested. *State v. Harvey*, 2001 WI 91, 254 Wis. 2d 442 (Wis. 2002). Examples of facts that constitute permissible judicial notice evidence include:

- State statutes. *State v. Zisch*, 243 Wis. 2d 175 (Wis. 1943)
- Criminal code bills. *Pruitt v. State*, 16 Wis. 2d 169 (Wis. 1962)
- The Constitution. *State v. Finsky*, 176 Wis. 2d 481 (Wis. 1922)
- Whether a truck was registered in another state. *Sisson v. Hansen Storage Co.*, 2008 WI App 111, ¶10, 313 Wis. 2d 411.
- Whether a park is a city park. *Harvey*, 2002 WI 93

What the defendant is requesting is astronomically different from what is afforded to any party under Wisconsin law. To illustrate the lunacy of this request: under Chapter 902 procedure, if the defendant were to prevail on this motion, the Court is directed as follows: “the judge shall instruct the jury to accept as established any facts judicially noticed.” Wis. Stat. § 902.01(7). It is unclear what that would actually mean as the defendant has yet to articulate what facts it wishes the court to adopt, but seems to heavily imply that the defendant would like the Court to ready verbatim hundreds, if not thousands, of state and federal records pertaining to the victim in this matter.

Furthermore, the defendant seems to ignore the rules of evidence in making this request, or, is making this request to obviate the rules of evidence to submit his entire case. There has been zero showing that the proffered documents constitute fully admissible evidence, including on issues of hearsay, authentication, foundation and relevance. A cynical view of the defendant's request would show that the defendant is making this request because he knows that the proffered documents are not otherwise admissible.

Looming over this entire request is the obvious issue of relevance. The State understands based on the entirety of the defendant's submissions that the proffered documents loosely relate to a request for a set of affirmative defense that do not exist under Wisconsin (or any jurisdiction) law. The proffered documents appear to describe facts about the victim outside of the time of the crimes the defendant has committed. They relate in no way to any element of any of the charged crimes. Giving the jury this irrelevant and frankly useless information would only serve to confuse them in their actual purpose during this criminal trial.

A criminal jury trial is an opportunity for parties who have disputes over relevant facts to make their case before a fact finder. Disputed facts are not ripe for judicial notice as they take away from the fact finder's purpose at trial and remove parties' ability to try their case before the jury. See *Harvey*, 2002 WI 91. The defendant's motion cites to two-curiously chosen Wisconsin cases in support of his request: he uses a footnote in *Harvey* where the Supreme Court of Wisconsin discusses the Court of Appeals decision, *Harvey*, 2002 WI 91, fn 13, and *Sisson v. Hansen Storage Co.*, 2008 WI App 111, fn 3, for another footnote describing how federal law and s. 902.01 are similar and how his request is mandatory. He conveniently ignores the mandate line in *Harvey*, where the Supreme Court found that taking judicial notice of an element of the crime was a constitutional violation: "Here, judicial notice—or, more particularly, the jury instruction directing the jury to accept the judicially-noticed fact as true—was applied to an element of the enhanced offense. This had the effect of not merely

undermining but eliminating the jury's opportunity to reach an independent, beyond-a-reasonable-doubt decision on that element, and was therefore constitutional error." *Harvey*, ¶ 33. He similarly omits that the trial court never took judicial notice of any facts and the case never went to a jury. *Sisson*, ¶ 1.

To take judicial notice of the proffered facts would be a violation of the victim's rights in this case. Victims under Wisconsin law are to be treated "with fairness, dignity, and respect for his or her privacy." Wis. Stat. § 950.04(1v)(ag). The request by the defendant here is an attempt to shame and harm the victim by bringing in irrelevant facts about the victim.

MOTION FOR AFFIRMATIVE DEFENSE

The defendant asks the Court to allow for affirmative defenses in this matter, including defense of others, coercion, and necessity. Dkt. 72 p. 1. The State addresses each request in turn and asks the Court to deny the defendant's motion in its entirety.

a. Self-defense, defense of others, and defense of property under Wisconsin law

Self-defense, defense of others, and defense of property are governed by Wisconsin statute. Under Wis. Stat. § 939.48(1), "[a] person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person." The privilege extends to allow "[a] person … to defense a 3rd person from real or apparent unlawful interference." Wis. Stat. § 939.48(4).

The defense of property statute contains separate subsections for the proponent's own property, s. 939.49(1), and "a 3rd person's property", s. 939.49(2). As there is no reasonable inference of fact, or argument, that the victim's animals were owned by the defendants, Section 939.49(2) would apply. It reads in full:

> A person is privileged to defend a 3rd person's property from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which the person is privileged to defend his or her

> own property from real or apparent unlawful interference, provided that the person reasonably believes that the facts are such as would give the 3rd person the privilege to defend his or her own property, that his or her intervention is necessary for the protection of the 3rd person's property, and that the 3rd person whose property the person is protecting is a member of his or her immediate family or household or a person whose property the person has a legal duty to protect, or is a merchant and the actor is the merchant's employee or agent. An official or adult employee or agent of a library is privileged to defend the property of the library in the manner specified in this subsection.

Although the defendant is not requesting a defense under s. 939.49(2), he factually does not meet the standard to get it. He is not the victim's family member, he has no legal duty to otherwise protect the victim's property, and he is not a merchant, employee, or agent of the victim. To evade his lack of defense under the proper statute, the defendant instead requests that the Court give him a defense of other persons instruction in this matter.

Nowhere in Wisconsin law is there a recognition that a pet animal is a person. The defendant makes several erroneous citations in an attempt to convince the Court.[2] He notes that corporations, cities, counties, and a board of regents have been found to constitute persons under Wisconsin law. Dkt. 73, p. 11. As those cases point out, this is true because the statutory definition of person under Chapter 990 is well defined to include those entities, "'Person' includes all partnerships, associations and bodies politic or corporate." Wis. Stat. § 990.01(26). The defendant subsequently cites to several statutes specific to animals and in doing so cites to nothing that explains how an animal is a human being—the State cannot prosecute human being victim cases under the criminal code sections for animal cruelty nor are human beings included within the Endangered Species Act. *Id.* pp. 12-13.

Honing in on the issue, the defendant declares in his motion that animals are recognized under Wisconsin Fourth Amendment exception laws. He cites *State v. Ware*, 2021 WI App 83, ¶20, 400 Wis. 2d. 118, for its citation of *State v. Rome*, 2000 WI App 243, ¶12 which reads "This exception is based upon the idea that "the preservation of human life is

[2] The State omits from its response here the various citations to foreign jurisdictions and other non-precedent that the defense cites throughout its brief.

paramount to the right of privacy protected by the fourth amendment." At no points are animals referenced—for what it is worth, *Ware* dealt with the analysis of whether officers could enter a garage upon finding blood and ultimately a human body inside. *Id.* ¶ 1. The defendant then writes that the Ware rule "was extended to permit a warrantless entry to stop the 'ongoing suffering of animals'", Dkt. 73, p. 13, citing to *State v. Bauer*, 127 Wis. 2d 401 (Ct. App. 1985), seemingly ignoring that *Bauer* pre-dated *Ware* by 36 years. As a brief, aside, Bauer relies upon its citation on ongoing suffering of animals as a means to except the Fourth Amendment on a case that has been since overruled. See *State v. Stanfield*, 105 Wis.2d 553, 559, 314 N.W.2d 339, 342 (1982). However, the issue with his argument has a far great problem.

The defendant is not a law enforcement officer and exceptions to the Fourth Amendment have no relevance to whether certain affirmative defenses may be raised. In citing *Ware*, *Bauer*, and *Rome*, the defendant plays a bait and switch game with the Court, attempting to trick it into acquiescing to a notion that law enforcement exceptions to the Constitution somehow legally justify defendants to commit multiple felonies.

To illustrate the foolishness of the defendants motion in one additional way, it is worth noting what unintended consequences would arise if the Court were to consider the defendant's argument that a domesticated animal is a person under Wisconsin's criminal code. The defendant would therefore not only be committing a burglary in this situation, but he would also be committing kidnapping, false imprisonment, and the taking of hostages. See Wis. Stats. §§ 940.31; 940.305; 940.30.

There is no confusion within Wisconsin statutes as how to classify a domesticated animal under the self defense affirmative defenses statutes. Nowhere in Wisconsin law is an animal considered a human being. There exists already a well written and litigated statute for defense of property of third persons. Thus, any requests to use another self-defense statute should be rejected by this Court.

COERCION

The defendant fails to assert sufficient facts to support a coercion defense. Coercion, like other privileges under Wisconsin law, is guided by statute: “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). A defendant seeking a coercion defense instruction must meet the initial burden of producing evidence to support such an instruction. See *State v. Stoehr*, 134 Wis.2d 66, 87, (Wis. 1986). A defendant is entitled to a coercion defense instruction if “(1) the defense relates to a legal theory of a defense, as opposed to an interpretation of evidence; (2) the request is timely made; (3) the defense is not adequately covered by other instructions; and (4) the defense is supported by sufficient evidence.” *State v. Coleman*, 206 Wis.2d 199, 212-13 (Wis. 1996) (citations omitted).

The first defect with the defendant’s argument is similar to his argument for self-defense. Coercion is only available to those who believe that there’s imminent hard to “the actor or another.” A domesticated animal is not a human being for the reasons already discussed above.

The second defect is equally simple: there is no allegation that the victim threatened the defendant. To assert coercion, a defendant must point to a threat. The defendant’s brief seems to imply that anyone who the defendant disagrees with on issues of animal welfare is threatening him. It is an illogical and non-legal application of the coercion statute. To illustrate it, one only has to look at the examples cited by the defendant. In *Coleman*, the defendant, who had just been robbed at his house, heard multiple persons breaking down his front door. 206 Wis. 2d at 203. He grabbed a firearm to protect himself. *Id.* In *Brown*, the defendant

attempted to rely on a coercion defense because he was being physically chased by another vehicle. *State v. Brown*, 107 Wis. 2d 44, 46 (Wis. 1982). Lastly, in *State v. Horn*, protesters of an abortion clinic attempted unsuccessfully to use coercion as a defense to trespassing charges. *Horn*, 126 Wis. 2d 447 (Ct. App. 1985).

Horn and *Brown* echo one similar concept that is instructive to this case: "[t]he defenses of coercion and necessity reflect the social policy that one is justified in violating the letter of the law in order to avoid death or great bodily harm." *Id.* at 454 (citing *State v. Brown*, 107 Wis.2d at 54–55). "A contrary holding would allow an individual to violate the law without sanction whenever he felt the government had not made the proper choice between conflicting values." *Horn*, 126 Wis. 2d at 456. That is what is occurring here. Instead of attempting to pursue legal recourse through the various appropriate legal means the defendant could have chosen, he instead chose to commit several felonies, now in the name of coercion. It was an ill-fated choice and one that is not privileged under Wisconsin law.

NECESSITY

The defendant's arguments in favor of a necessity instruction take the Court and State the furthest astray of Wisconsin law to date. Under Wisconsin law, the necessity defense is limited to scenarios where: "[p]ressure of natural physical forces which causes the actor reasonably to believe that his or her act is the only means of preventing imminent public disaster, or 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. § 939.47. The defendant cites to a single case in support of his necessity defense: *State v. Olsen*, 99 Wis. 2d 572 (Ct. App. 1980). The State agrees that *Olsen* is dispositive of the defendant's necessity request in this case. Unhelpful to the defendant is that the defendant in *Olsen* was categorically denied the right to a necessity defense—in *Olsen*, the defendant was

convicted of disorderly conduct for protesting outside of a nuclear power plant. *Id.* at 573. In rendering its decision, the Court of Appeals issued a clear delineation of the law:

> "We hold that the defense of necessity is unavailable as a matter of law to a demonstrator who seeks to stop a shipment of spent fuels which he believes to be unsafe.
>
> The doctrine of necessity is generally inappropriate to justify acts of civil disobedience, since the defendant's conduct, rather than attempting to directly avoid a specific harm, attempts to transcend accepted democratic processes and seeks to change a political decision of society which may only secondarily avoid a particular harm or evil. Tiffany & Anderson, Legislating the Necessity Defense in Criminal Law, 52 Denver L.J. 839, 844 (1975).
>
> A contrary holding in this case would allow a citizen to disrupt government any time he felt government was not properly exercising its choice of values. We cannot permit such a result." *Id.* at 577.

The Court in *Olsen* additional clearly defined what is not a natural physical force that would give rise to a necessity defense:

> "The actions of a private industry in shipping spent fuel do not constitute a natural physical force. The facts that the spent fuel consisted of uranium and its by-products, and that uranium is an element found in nature, do not convince us that the transportation of the spent fuel-the act which caused defendant to commit the crime-is a natural physical force."

Here the defendant suggests that the victim's treatment of animals constituted actions that could give rise to the privilege of necessity. The victim is not mother nature. A dog owner is not a storm, fire, or wind. Necessity does not apply.

CONCLUSION

For the foregoing reasons, the State asks the Court to deny the defendant's motions in limine on judicial notice and affirmative defenses.

Date Signed: 03/07/24

Electronically Signed By:

Alexandra Keyes

Assistant District Attorney

State Bar #: 1097641