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STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 19MILWAUKEE
COUNTYSTATE OF WISCONSIN,
Plaintiff,

v.

FABIAN HARRIS,
Defendant.

Case No. 24CF1587

**DEFENDANT'S SUPPLEMENTAL BRIEF REGARDING THE TESTIMONY OF ITS
EXPERT WITNESS**

The state argues that this court should exclude the proposed testimony of defense expert Robert Willis because it would not assist the factfinder. During the hearing held on December 13, 2024, the Court asked parties to provide supplemental briefing before issuing its decision. To put into context Mr. Willis's proposed testimony, this brief will begin by outlining the facts that he considered when rendering his opinion.

FACTS

In January of 2024, Fabian Harris was hired by the owners of Casablanca Restaurant and Nightclub to be an armed security "bouncer" on busy evenings. One of his job duties was to check patrons' identification at the restaurant's entryway. Casablanca is located on Milwaukee's Brady Street, a street known to have a busy late-night scene. Inside the restaurant there are two levels. The first floor, or ground level, contains a bar and some restaurant seating, but is mainly used for overflow or private parties. The upper level, which houses the large main bar and kitchen, is where patrons are directed when they enter the restaurant.

On Wednesday, April 3, 2024, and into the early morning hours of April 4th, Mr. Harris was working at the downstairs entrance greeting guests, checking IDs, and directing them to the bar and

restaurant upstairs. His wife, Brianna Harris, was (and still is) a bartender at Casablanca. She was working behind the upper level bar on the evening of April 3.¹

Shortly after 1:00 in the morning on April 4, a man, later identified as Jes Sartin (the alleged victim), enters Casablanca with a woman wearing a denim jacket.² They each hand IDs to Mr. Harris and make their way to the staircase towards the upstairs bar.³ Mr. Sartin and the woman take a seat at the bar on stools situated closest to the upstairs restroom. Before he sits down, Mr. Sartin takes off his red jacket and drapes it over the back of his barstool.

About 30 minutes after Mr. Sartin arrives at Casablanca, a woman enters the bar without providing proper identification. While Mr. Harris tried to deny her entry, she was able to make her way past him towards the upstairs bar. Once upstairs, the woman attempts to order a drink from the bartender, which happens to be Ms. Harris, but she is denied service and asked to leave because she did not have her ID. At this point, the woman begins arguing with Ms. Harris and quickly physically attacks her. A fight among 5 to 6 women ensues in the hallway between the upstairs bar and the restrooms. This altercation is captured on Casablanca's upstairs bar camera.

Mr. Harris is seen on the camera trying to break up the fight between the women. Simultaneously, Mr. Sartin appears to begin engaging in the fight, but instead, focusing his attention on Mr. Harris. The altercation between the two men moves into the women's restroom briefly. While the camera does not capture the moments inside of the restroom, the camera footage clearly depicts another Casablanca employee standing at the doorway of the restroom looking inside.⁴

¹ As lead bartender, Ms. Harris was also one of the floor managers for the restaurant and bar during her shift on April 3.

² This is captured on Casablanca's downstairs entry camera. All footage obtained by the defense from the owners of Casablanca has been turned over to the state. The surveillance records only video, it does not contain audio.

³ Camera footage captures Mr. Sartin with what appears to be a heavy L-shaped item in the front left pocket of his jacket. The weight and shape can be seen clearly on the video and plainly appears to be consistent with the shape of a firearm.

⁴ This employee is later learned to be Jeffrey Grooms, who works in the kitchen at Casablanca.

By the time the two men emerge from the bathroom, they are no longer physically fighting. Mr. Sartin appears to be walking away from Mr. Harris towards his jacket at the bar.⁵ Before he reaches the bar, Mr. Harris's arm raises and Mr. Sartin and other patrons hit the ground. What the surveillance footage does not capture though is Mr. Sartin yelling back to Mr. Harris, "I got one too, I'm going to kill you and your bitch!"⁶

Numerous people from Casablanca immediately call for police assistance. Mr. Harris himself is actually one of the first to call 911. Police arrive at Casablanca at approximately 1:43 am. Mr. Harris unlocks the door for them and directs them to his firearm and magazine, which he had set down for them to collect.

A final note: Casablanca's surveillance cameras remain active while the police conduct their investigation, interview witnesses, and provide medical assistance to Mr. Sartin. Police separate some witnesses to interview by walking them to the outside patio. During this time, the woman in denim walks over to Mr. Sartin's barstool and inconspicuously tucks his red jacket under her arm. Neither the jacket nor the L-shaped item in its pocket were recovered during this investigation.

At trial, Fabian Harris intends to argue that he acted in defense of himself and others, particularly his wife, Brianna Harris, on April 4, 2024.⁷ Importantly, Mr. Harris intends to testify at his trial to the facts and circumstances known to him at the time of the offense. The defense DOES NOT intend to call its expert in an effort to avoid Mr. Harris taking the stand. Mr. Willis's testimony is meant to supplement Mr. Harris's – to provide context.

⁵ It should be noted that had he intended to exit the restaurant immediately, he would have had to walk in the opposite direction towards the staircase.

⁶ This was heard by Casablanca employee, Jeffrey Grooms, who was standing in the women's restroom doorway during the altercation between Mr. Harris and Mr. Sartin. SPD Investigator Edwin Reyes authored a report detailing his conversation with Mr. Grooms. That report has previously been furnished to the state.

⁷ At the time, Mr. and Ms. Harris believed that they were newly pregnant. This is important because Mr. Harris discharges his firearm one time when Mr. Sartin's angry rage was headed in the direction of his pregnant wife.

LEGAL ANALYSIS

The state does not appear to dispute Mr. Willis's expertise, qualifications, or training and experience to testify. Instead, the state asserts that Mr. Willis's testimony does not concern a matter that is beyond a juror's understanding. Further, that determining whether Mr. Harris acted in self-defense does not require any additional knowledge or context. The defense contends that Mr. Willis's testimony *does* deal with matters beyond what is generally known in the community. Fortunately, a large majority of humans have never been faced with circumstances that require immediate action in a life or death situation. Mr. Willis would be able to describe the criteria that he teaches about related to analyzing deadly force events.⁸ However, it is important to note that exclusion of an expert witness is not required even when the proposed subject matter can be easily understood by a juror of ordinary intelligence. *See, State v. Watson*, 595 N.W.2d 403, 412 (1999).

Mr. Willis will not testify to the veracity of Mr. Harris's account or perspective from the incident. The law on this is clear: no witness can testify that another is telling the truth. This is commonly called the *Haseltine* rule. *State v. Haseltine*, 120 Wis.2d 92 (1984). Instead, Mr. Willis's testimony will provide the jurors with an understanding about the consistency of Mr. Harris's behavior – and Mr. Sartin's – with the behavior of those faced with the same type of life or death situation.

I. Robert Willis's Testimony is Legally Permissible

Expert testimony shall be admitted if the Court determines that the evidence meets the criteria outlined in § 907.02(1) and *Daubert v. Merrill Dow Pharmaceuticals*. 509 U.S. 579 (1993). The rule, as outlined in Wis. Stat. § 907.02(1) reads:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if the testimony is based upon sufficient facts or data, the testimony is

⁸ *See*, Defendant's Notice of Expert, filed on August 28, 2024, concerning Mr. Willis's testimony on Threat Assessment and Imminent Threat Criteria.

the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.

The state's objection to Mr. Willis's testimony appears to be rooted in the first *Daubert* factor: whether the specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.

Expert testimony is helpful to a jury "if it concerns a matter beyond the understanding of the average person, assists the jury in understanding facts at issue, or puts the facts in context." *State v. Dobbs*, 392 Wis.2d 505, 536 (2020). Mr. Willis's testimony will help the jury by giving them pertinent information about handguns and self-defense situations and what those look like in real time. His exposition testimony will educate the factfinder on issues that include why an individual might shoot someone who is seemingly walking away, the challenge in firing accurately when under stress, the threat of being disarmed, and the significance of body size as well as a previous physical altercation and how that might impact physical ability in self-defense.

First and foremost, Mr. Willis will not testify to Mr. Harris's state of mind. He will not – and cannot – offer evidence related to Mr. Harris's subjective beliefs at the time of the incident. Instead, Mr. Willis will discuss the principles of deadly force and how that relates to using a gun for self-defense. He will testify to his training and experience regarding use of force dynamics when one individual is unarmed and why a person might fire at someone if they perceive the threat of retrieving a gun as a true threat worthy of immediate action. Civilians don't often find themselves in a situation where they have to make an immediate and instinctive decision about whether to use deadly force during the course of an attack. Without this frame of reference, jurors might not understand why a person would shoot someone who appears to be walking away from them.

Furthermore, as outlined in Wis. JI-Criminal 805, the jury will have to determine the reasonableness of Mr. Harris's belief from a subjective as well as objective standpoint. Mr. Willis's testimony can provide the jury with context in which to assess the reasonability of his actions. This is

absolutely not to say that it would be proper for Mr. Willis to testify to what was going on in Mr. Harris's mind at the time. Mr. Willis will not make the ultimate conclusion regarding the credibility of Mr. Harris's beliefs, that is for the jury alone to decide.

This case requires the factfinder to thoroughly analyze Mr. Harris's actions over the span of one minute. The jurors will have hours, if needed, to deliberate on the reasonableness of his behavior during this single minute of his life. Mr. Willis's specialized knowledge can provide the jury with information involving the technical education about guns, give insight rooted in reliable principles regarding use of force, and provide an opinion based on a thorough review of the record – most of which was evidence provided by the state and through video surveillance obtained by the defense.⁹ His testimony will help the jurors examine and understand the dynamic and perspective of an individual during the trauma of the ongoing threat.

II. Expert Testimony Concerning Use of Force in a Self-Defense Case is Analogous to *Jensen* Evidence

An interesting comparison here is the narrow type of expert testimony coined *Jensen* evidence after the progenitor case, *State v. Jensen*. 147 Wis.2d 240, 256 (1988). This type of evidence is generally used by the government to offer an opinion about the consistency of the behavior of an individual whom it believes is the victim of aggression. *Id.* It is presented through an expert in the form of testimony comparing the behavior of a sexual assault victim to that of other victims. *Id.* This rule allows the expert to opine as to whether or not the victim's behavior is consistent with that of sexual assault victims. *Id.* *Jensen* evidence essentially allows an expert to first provide exposition testimony describing the behavior of a particular individual in the case as well as the class behavior typically observed, and then to render an opinion about whether the particular individual's behaviors were consistent with that of the class. *Id.* at 257; *see also*, *State v. Rizzo*, 2002 WI 20, ¶21.

⁹ This is important because the bulk of the information considered by Mr. Willis in rendering his decision came from the discovery materials, not from Mr. Harris himself.

While *Jensen* evidence is typically offered by the state, most frequently in sex cases, there is no reason why its rationale cannot apply in a case involving a defendant's reactive behavior to a perceived or real threat. In *Jensen*, the state's expert opined that the complainant's behavior was consistent with the behavior of victims of the same type of crime. *Jensen*, at 256. **The opinion testimony was meant to assist the factfinder in understanding the evidence – or behavior – of a victim of aggression, in that case, sexual violence.** *Id.* Here, Mr. Willis will testify as to his expertise in defensive tactics, firearms, the dynamics of using deadly force, and the characteristics or criteria used to critique the use of force (in police officers and civilians – because civilians should not be held to a higher or different standard than law enforcement when defending themselves). It then follows that Mr. Willis should be allowed to opine that Mr. Harris's behavior was consistent with that of others who have found themselves in a position to determine and assess a life and death threat. **Mr. Willis's testimony will assist the factfinder in understanding the evidence – namely, Mr. Harris's reactive behavior – as a victim of aggression, here, physical violence.** *See, Jensen*, at 257 (holding that “an expert witness may be asked to describe the behavior of the complainant and then describe that of victims of the same type of crime, if the testimony helps the jury understand a complainant's reactive behavior” (internal quotations omitted)).

To detail this concept further, Mr. Willis would apply his specialized knowledge on the subject matter to the facts in the present case. Specifically, he would discuss Mr. Harris's behavior before, during, and after the altercation. Here, Mr. Harris did not provoke or start the altercation with Mr. Sartin – Mr. Harris was the victim of Mr. Sartin's aggression. Then, in the midst of a physical fight, Mr. Sartin disengaged and verbally informed Mr. Harris that he intended to get his own [gun] to use against him and his pregnant wife. Mr. Willis would then speak to the way he has trained individuals to assess threats such as this one if they are ever faced with such aggression. Finally, he would discuss Mr. Harris's actions after the single shot: calling the police immediately and remaining on scene to provide his weapon when they arrived. The opinion that Mr. Willis would subsequently render would

be that Mr. Harris's behavior on April 4, 2024, was consistent with the class of individuals that are reacting to a threat to the physical safety of themselves or others. *See, Jensen*, at 257 (explaining that an expert witness may then "give an opinion about the consistency of a complainant's behavior with the behavior of victims of the same type of crime only if the testimony will assist the trier of fact to understand the evidence or to determine a fact at issue").

While it is true that *Jensen* and its progeny primarily discuss the government's ability to present evidence in its case-in-chief about the behavior of a victim of aggression and how it compares in similar situations; but why should that right be limited to the prosecution? There is no question that *Jensen* evidence in a case involving allegations of sexual assault is likely to evoke an emotional response from jurors, which is why it is carefully presented to provide context without allowing testimony with respect to the veracity of the allegation. Shouldn't a defendant – who enjoys the right to due process and the constitutional right to present a defense – be treated similarly to a victim? Particularly when that defendant is presenting evidence that they are the victim of aggression, which is why they felt it necessary to defend themselves?¹⁰ There is nothing in the caselaw that suggests that a defendant should not be entitled to present similar comparison evidence through an expert with specialized knowledge.¹¹

¹⁰ The state argued at the motion hearing that Mr. Willis's testimony would be akin to drawing conclusions about Mr. Harris's intent or state of mind at the time of the incident. To that point, the defense agrees that Mr. Willis cannot discuss what was going on in Mr. Harris's head. However, it should be noted (and was discussed during the hearing) that the state routinely calls "experts" to testify in cases involving allegations of possession of illegal drugs with the intent to distribute to render an opinion based on reviewing the prosecutor's case file on whether a defendant possessed drugs for personal use or whether they are dealing said drugs. These "experts" talk about their training and experience in narcotics investigation and then compare their understanding of the world of drug dealing to the facts in the case at hand to explain why they come to the conclusion that the defendant is a drug dealer. Despite legal challenges from defendants on these types of "experts," courts have overwhelmingly found that police officers' expert testimony is admissible where it will aid the jury's understanding of an area, such as drug dealing, not within the experience of the average juror. This is yet another example of the latitude the government has to use experts to provide comparative testimony.

¹¹ It should be noted that this is exactly what the Wisconsin Supreme Court did in *State v. Richardson* when it held that Richardson's expert was permitted to testify for the defense that her behavior was consistent with battered woman's syndrome. 189 Wis.2d 418, 431 (1994).

CONCLUSION

In sum, the defense is asking that this Court find that the testimony of its expert, Robert Willis, is admissible under *Daubert* and *Jensen*. Specifically, that Mr. Willis be allowed to testify about his specialized knowledge regarding the technical education about guns, principles regarding use of force, expertise in defensive tactics, the dynamics of using deadly force, *and to opine that Mr. Harris's behavior was consistent with that of others in similarly situated circumstances* as was found appropriate in *Jensen*.

Dated in Milwaukee, Wisconsin, this 22nd day of January, 2024.

Respectfully submitted,
FABIAN HARRIS, *Defendant*

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STATE OF WISCONSIN
MILWAUKEE COUNTY

SS.
I, the undersigned Clerk of the Court of Milwaukee County, Wisconsin do hereby certify that I have compared this document with the original on file and that the same is a full, true and correct copy of said original and of the whole thereof, as the same remains of record in my office.
IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court, OCT 30 2025

this

date

Anna Maria Hodges
ANNA MARIA HODGES
Clerk of Circuit Court