

STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

STATE OF WISCONSIN,
Plaintiff,
vs.

TANYA A. STAMMER,
Defendant.

Court Case No.: 21 CF 374

**DEFENSE OBJECTION TO
PROSECUTION'S MOTION
TO EXCLUDE
AFFIRMATIVE DEFENSE**

Ms. Tanya Stammer, appearing specially by her attorneys, Aaron A. Nelson and Nelson Defense Group, LLC, and Mindy M. Nolan and Ahmad & Associates, provides the following objection to the State's Motion to Exclude Coercion Defense filed on December 29, 2022.

The prosecution prematurely makes this motion to the Court, before any evidence has been presented at trial, that the defense will not be able to make the 'low bar' production of some evidence to support the affirmative defense. *See State v. Schmidt*, 2012 WI App 113, ¶12; *State v. Stietz*, 2017 WI 58, ¶16; and *State v. Johnson*, 2021 WI 61, ¶16. As the basis for its objection, the prosecution relies on excerpts from text messages purportedly sent by Ms. Stammer on March 30, 2021, her in-custody interview in which the defense is challenging its admission, and the testimony of a 'jail-house snitch,' Alicia Thomas, who allegedly received a letter from Ms. Stammer while in jail requesting that Thomas testify as an alibi witness for her. As legal authority, the prosecution cites *State v. McClaren*, 2009 WI 69, 318 Wis.2d 739 (2009).

The prosecution's reliance on *McClaren* in this particular case is misplaced. In *McClaren*, the Wisconsin Supreme Court took up the issue as to "whether a circuit court has the authority to order a defendant to disclose any planned *McMorris* evidence prior to trial, so that the factors involved in determining the evidence's admissibility can be weighed not only prior to admission, but also prior to trial." *Id.* at ¶ 21. The focus of the issue was the admission of 'other-acts' evidence, which generally requires pre-trial ruling, rather than relevant evidence to support an affirmative defense.

Id. The prosecution is requesting that this Court summarily preclude the affirmative defense before any testimony has been presented. It is a troublesome request, as what experience has taught us all is that we do not know exactly how the evidence will come in at trial until the evidence is actually presented. Witness testimony and recollections can change, some witnesses may become unavailable, and certain evidence may be excluded through pre-trial orders, such as suppression. The Wisconsin Supreme Court has held for the last five decades that the weighing of evidence is within the sole province of the jury and that the trial court does not become involved in weighing the evidence before an affirmative jury instruction is given. *State v. Stietz*, 2017 WI 58, ¶16; *State v. Mendoza*, 80 Wis. 2d 122, 152, *Ross v. State*, 61 Wis. 2d 160, 172-73 (1973). The prosecution is essentially asking the Court to weigh the evidence, draw conclusions, and exclude the affirmative defense prior to its presentation at trial.

On January 2, 2023, the Defense filed a Memorandum of Anticipated Evidence Admissibility (Document 209) outlining how they intended to meet the low bar showing of some evidence that first, Ms. Stammer was a victim of human trafficking, and second, that the alleged offense was a direct result of the human trafficking violation. The defense memorandum encompasses a breadth of sources and evidence to support the defense rather than the text message snippets which the prosecution included in its motion to exclude.

Specifically focusing on Ms. Stammer's own recorded interview, if the Court does not exclude its admission at trial, is enough to meet the low bar standard required for the first element of affirmative defense. In her initial interview on April 5, 2021, Ms. Stammer allegedly states:

Tanya Stammer: That's Hammer's house. (Referring to B.P.'s residence)

Officer 2: Hammers. Who's Hammer?

Tanya Stammer: One of Tanya's old clients. He tried to beat her with a hammer one time, and she hasn't talked to him since (Ms. Stammer was allegedly speaking in the third person)

Officer 1: How many times?

Tanya Stammer: No. Like she's seen him a few times. The last time was when he raped her back in November.

.....

Tanya Stammer: Hammer hurt her very bad. Grace helped Tanya with me.

.....

Officer 1: Do you know him? Do you just call him Hammer because of that incident or was that like a nickname of his?

Tanya Stammer: That's the first name she gave him after he tried to beat her with Hammer the very first time they met.

During this first interview, Ms. Stammer is allegedly referring to the alleged victim, B.P. He is referred to as a former client, inferring that there were previously commercial sex acts between the two. Then, she allegedly states that 'Hammer' or B.P. had tried to beat her with a hammer and raped her in November 2020. This portion of the interview alone, if admitted, meets the first element of the affirmative defense – that Tanya Stammer was obtained by B.P. for the purpose of a commercial sex act and did so by causing bodily harm, namely trying to beat her with a hammer and raping her.

One of the prosecution's key witnesses, G.R., who was interviewed prior to Ms. Stammer or Mr. Payne on April 1, 2021, provides further potential testimony to support the affirmative defense – that the purpose of the alleged visit to B.P.'s house on March 30, 2021, was for Ms. Stammer to perform a commercial sex act. G.R. stated that she was with Ms. Stammer and Mr. Payne on March 30, 2021, and it was her car on surveillance at the BP gas station from which the two allegedly exited. She went on to discuss the alleged purpose of the visit to B.P.'s house:

Officer 2: Oh, it was a prostitution thing?

G.R.: Because I think so, uh, I'm not sure.

Officer 2: Okay. What makes you think that?

G.R.: Cause that's the lifestyle she lives.

.....

Officer 2: Okay. Um, so Tanya went over there for some prostitution type thing?

G.R.: Yes.

Dontae Payne's recorded interview provides evidence that the offense was a direct result of the human trafficking. Specifically, that when he allegedly walked into the residence after Ms. Stammer allegedly entered, he saw Ms. Stammer being attacked by B.P.:

Dontae Payne: I went in and basically, I saw him trying to harm her. I saw him trying to attack her.

Officer 3: Okay, explain that.

Dontae Payne: Like, I can't really explain it because I don't know why he was trying to attack her.

.....

Officer 3: So, so he's trying to attack her. Did you, obviously you went to help her, right?

Dontae Payne: Yeah. Of course.

.....

Officer 2: Did you have the gun with you when you walked into the house?

Dontae Payne: Yes, I did.

Officer 2: Okay. Then what happened?

Dontae Payne: He tried to reach for it.

Officer 2: Okay. Then what happened?

Dontae Payne: It was self-defense.

Officer 3: Okay.

Officer 2: Okay. Then what happened?

Dontae Payne: We left, obviously, I know y'all got it on camera, so y'all obviously know that.

Mr. Payne admits in his interview to killing B.P. after seeing Ms. Stammer being attacked and himself intervening, stating that it was self defense. These statements serve as a logical connection that the alleged homicide was a direct result of the human trafficking offense.

The defense highlights its ability to offer sufficient evidence for the affirmative defense based upon these recorded interviews in this motion. However, as outlined in its January 2, 2023 memorandum, there are multiple additional sources of evidence to further support the defense. The defense is not limiting itself to meet the low bar standard through the recorded interviews alone.

The defense is asking that the Court take no action on the prosecution's motion to exclude the affirmative defense until after the evidence is closed at trial. This issue should be properly raised at the jury instruction conference and not in a pre-trial motion asking the Court to bar an affirmative defense before any evidence has been presented.

Dated this 1st day of February 2023

Respectfully submitted,
AHMAD & ASSOCIATES



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