

FILED  
01-26-2024  
CIRCUIT COURT  
DANE COUNTY, WI  
2022CF002481

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No: 2022CF002481

MARK WAGNER,

Defendant.

REPLY TO STATE’S RESPONSE TO DEFENDANT’S  
MOTION TO INTRODUCE *McMORRIS* EVIDENCE

The Defendant Mark Wagner, appearing by Attorneys Michael J. Steinle and Daniel H. Sanders, hereby replies to the State’s response to his motion for an Order allowing the introduction of *McMorris* evidence at the trial in this matter in support of his claim of self-defense. See *State v. McMorris*, 58 Wis.2d 144, 205 N.W.2d 559 (1973).

On December 21, 2023, Wagner filed a *McMorris* motion seeking to prove his state of mind at the time of the incident, February 3, 2022, by introducing evidence of the alleged victim’s, Quadren Wilson, past turbulent and violent criminal behavior and his propensity to carry and use firearms. Such evidence supports the reasonableness of Wagner’s fear and belief that Wilson had a firearm on the day of the incident, February 3, 2022. (Docket 70). As stated in his motion, Wagner will introduce his own testimony as well as corroborating testimony of others to show that the Wilson’s past turbulent violent criminal behavior and propensity to carry and use firearms was common

knowledge among law enforcement officers and others and affected the incident at hand.

On January 2, 2024, the Court ordered the State to file a response to the *McMorris* motion by January 16, 2024, and Wagner to file a reply by January 26, 2024. (Docket 71).

On January 17, 2024, the State filed an untimely response to Wagner's *McMorris* motion. (Docket 74). In the response, the State concedes that if Wagner establishes a sufficient factual basis for a self-defense and/or defense of others claim then Wagner can testify about *McMorris* evidence of the alleged victim known to him prior to the encounter on the morning of February 3, 2022. The State also concedes that Wagner can submit corroborating *McMorris* evidence of the alleged victim from others regarding the *McMorris* evidence testified to by Wagner. The parties agree that the allowance for any *McMorris* evidence is subject to the Court's discretion pursuant to Wis. Stat. § 904.03. Although the admission of such evidence rests on the exercise of the sound discretion of the trial court, Wagner submits that this clearly is a case where such evidence must be admitted in order to get to the truth of the case. *McMorris*, at 152; *McAllister v. State*, 74 Wis.2d 246, 250, 246 N.W.2d 511, 514 (1976).

In its response, the State raised "several issues in dispute." First, the State believes that no *McMorris* evidence should be commented on or admitted into evidence until or unless Wagner testifies - or the State introduces into evidence - evidence that Wagner intentionally used deadly force in self-defense or defense of others based in part of Wagner's knowledge of it and his reliance on that knowledge in using deadly force. Wagner generally agrees with the State's position. However, should the State call

a witness in its case who was privy to the Operational Plan prior to February 3, 2022, and/or was at the briefing with Wagner on the morning of February 3, 2022, Wagner believes the *McMorris* evidence from the OP and briefing will be a proper line of questioning on cross-examination.

The State also seeks clarity of which *McMorris* evidence Wagner intends to offer. Wagner will offer the information contained in the February 3, 2022, Operational Plan that was emailed to Wagner on or about February 2, 2022. Wagner received the OP via his work email during the day of February 2, 2022. He reviewed the OP by himself and then discussed the OP with DCI Special Agents Hale and Peskie in-person and over the telephone. Later in the day, Wagner and Hale again discussed the information in the OP about Wilson's turbulent and violent history and fleeing and eluding incidents and agreed that they should bring additional ballistic shields and Halligan tools to Madison on February 3, 2022, in the event a subject in custody (SIC) maneuver would be needed, or if a hostage situation occurred. On his way home that evening, Wagner picked up additional shields and Halligan tools from the Milwaukee DCI Office.

Wagner will also offer the information that he learned in-person on the morning of February 3, 2022. DCI SA Volenberg led the briefing of local, state, and federal officers and agents and reviewed the information about Wilson's turbulent and violent past in detail. During the briefing, Volenberg and MAPD Detective Suzie Gonzalez described Wilson as one of the most dangerous persons in Madison at the time. Volenberg and Gonzalez provided the additional following details regarding Wilson's turbulent and violent conduct:

- Wagner and the others present were told that Wilson was a target of an ongoing joint state and federal wire-tap investigation of a drug-trafficking organization operating between Chicago, IL, and Dane County, Wisconsin. During that investigation in the Fall of 2020, Volenberg and other agents identified Wilson from informant information, physical surveillance, and authorized wire interceptions as an ounce-level cocaine dealer who was in regular possession of firearms.<sup>1</sup> Volenberg also informed Wagner and the others present that since the conclusion of the wire-tap investigation, informants have informed him and other law enforcement officers that Wilson continues to traffic in drugs and possess firearms on a routine basis.
- Wagner and the others present were told that Wilson was on extended supervision for felony convictions of possession of a firearm by a felon and 2<sup>nd</sup> degree reckless endangering safety for shooting into a home and wounding a resident in 2017.<sup>2</sup>
- Wagner and the others present were told that Wilson was a suspect in several unsolved shooting and homicide investigations, including the shooting death of 11-year-old Anisa Scott on August 11, 2020. The law enforcement investigation of that shooting revealed that Wilson and Christopher Carthens were the intended targets of the multiple shooters for drugs believed to have been stolen by Carthens, Wilson, and their associates.
- Wagner and the others present were told that in April 2021, an individual died of a heroin/fentanyl overdose death in Madison. Wilson was identified by DCSO as the supplier of the drugs that caused the overdose death.<sup>3</sup>
- Wagner and the others present were told that local law enforcement knew of several complaints about Wilson with firearms, including a May 2021 incident during which Wilson was observed pointing a handgun at a bus driver.
- Wagner and the others present were told that in early June 2021, Wilson was wanted for domestic violence disorderly conduct, and domestic violence telephone threats. During these incidents, Wilson threatened to shoot the victim, TYT, and the victim told the police that Wilson carries a firearm.<sup>4</sup>
- Wagner and the others present were told that on June 8, 2022, local, state, and federal law enforcement officers attempted to arrest Wilson for his

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<sup>1</sup> DCI Case No. 2020-4215.

<sup>2</sup> MPD # 2018-00065435 and Dane County Circuit Court Case 2017CF1958.

<sup>3</sup> DCSO # 2021-124800 and Dane County Circuit Court Case No. 2022CF000476.

<sup>4</sup> MPD # 2021-00206561 and Dane County Circuit Court Case No. 2021CM1553.

involvement in the above-described heroin/fentanyl overdose death, domestic violence incidents, and extended supervision violations. As uniformed officers approached Wilson standing by a vehicle, Wilson ran to his vehicle, disregarded their commands to stop, jumped inside his vehicle, and fled from marked police vehicles while almost running over a uniformed MAPD officer. During his flight, Wilson's speeds exceeded 90 mph through residential neighborhoods in Madison. At one point in his flight, Wilson swerved around vehicle stop sticks to avoid apprehension and continued his fleeing and eluding. Despite FBI airborne surveillance of Wilson's flight, Wilson was able to meet up with another unknown individual who then assisted him in avoiding arrest.<sup>5</sup>

- Wagner and the others present were told that on February 3, 2022, at approximately 7 am, the WDOC agent supervising Wilson, in coordination with DCI and the Dane County District Attorney's Office (DAO), issued a warrant for Wilson's arrest for supervision violations made during his extended supervision.

The State also raises a concern that some of the proffered *McMorris* evidence does appear to bear on any potential threat of the victim to Wagner. To the contrary, based on his extensive training and experience as outlined in his original *McMorris* motion, at the time of the incident on February 3, 2022, Wagner knew that:

- drug traffickers often illegally retain firearms on their persons, at their residences, and in their vehicles to protect themselves, their drugs, and their drug proceeds;
- persons who flee from the police do so often because they fear being caught with drugs, firearms, or other contraband;
- persons who repeatedly flee from the police are likely to flee from the police in the future; and
- repeat domestic violence offenders have a high propensity for unpredictable volatile behavior which increases concerns about the safety of the victims, the police, the public, and the offenders when arrests are made of the offenders.

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<sup>5</sup> MPD # 2021-00091412.

The State's response also raised a concern about potential corroborating evidence Wagner might offer pursuant to *McAllister*. Wagner is mindful of the limits set forth in Wis Stat. § 904.03. The State's related concern is that Wagner will introduce evidence that "many law enforcement officers can and will corroborate the way Wagner acted was reasonable" is for not. Wagner does not intend to introduce such a generalized statement. There will be, however, several law enforcement officers who can testify about the same *McMorris* evidence that Wagner was aware of prior to the incident with Wilson on February 3, 2022.

Based on the foregoing, Wagner respectfully requests that the Court grant his *McMorris* motion.

Dated at Milwaukee, Wisconsin, this 26<sup>th</sup> day of January 2024.

Respectfully submitted,

TERSCHAN, STEINLE, HODAN &  
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