

STATE OF WISCONSIN,  
Plaintiff,

vs.

File No. \_\_\_\_\_

(NAME CLIENT),  
Defendant.

**MOTION TO ADMIT PRIOR ACTS OF VIOLENCE OF DECEASED**

TO: DISTRICT ATTORNEY  
\_\_\_\_\_ COUNTY, WI

NOTICE IS HEREBY GIVEN that on \_\_\_\_\_, (name client), the defendant, by counsel, \_\_\_\_\_, will move the Court for an order permitting the admission of evidence of prior acts of violence of the deceased known to Mr. Client at the time of the alleged offense, October 13, 2012. The theory of defense is that Mr. Client was acting under a reasonable belief that he was, “preventing or terminating what the person reasonably believes to be an unlawful interference with his person” Wis. Stat. 939.48 when he produced a firearm. Mr. Client only pointed the gun at the deceased, in self-defense after she pulled a knife on him and that the shot fired occurred by accident. Specifically, the evidence will show that the deceased, verbally threatened to harm Mr. Client, pulled a knife and slashed at Mr. Client, thereby cutting him and grabbed at the gun ultimately causing it to discharge. The defense thus asks the court for an order permitting both the defendant to testify about prior acts of violence and to admit call witness and submit independent evidence corroborating those events. The specific acts known to Mr. Client at the time were as follows:

1. Mr. Client met Ms. Deceased in the Marathon County jail. At the time Ms. Deceased was serving a sentence resulting from a battery to her mother, (name). Ms. Deceased told Mr. Client she beat up her mother and threw chairs at her. The defense has corroborated the incident through an open records request for Ms. Deceased’s criminal record and police reports from the battery offense. During the offense Ms. Deceased threw chairs at her mother twice, cutting her mother’s arm, attempted to punch her and threatened to kill her.
2. Ms. Deceased was charged with this incident which occurred on \_\_\_\_\_ as \_\_\_\_\_ County Case \_\_\_\_\_.

3. The defense intends to call Ms. Deceased's mother, (name), and to corroborate this incident. According to police reports, Ms. Deceased yelled at her mother and calling her a "Fucker" and a "Bitch." Ms. Deceased threw fish all over the floor of the apartment she shared with her mother, and then attempted to punch her but missed. Ms. Deceased then proceeded to throw a chair at her mother. Ms. Deceased told her mother, "that she was going to beat her to death," and then proceeded to through a chair at her mother.
4. Prior to the homicide, Ms. Deceased drew a knife on Mr. Client on several occasions and cut him during arguments.
5. Ms. Deceased previously struck Mr. Client in the face with a hammer.
6. The defense also proposed to call other witnesses, who will testify that Ms. Deceased behaved erratically and argued with Mr. Client all the time. The defense is in the process of investigating such witnesses and will provide the names to the state.
7. Ms. Deceased had a history of being erratic and unpredictable in Mr. Client's presence when under the influence of methamphetamine and witnesses can corroborate this as well.

#### LEGAL ARGUMENT:

Per Wisconsin Statutes sec, 939.48, 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. When deadly force is used, the accused must reasonably believe he was in danger of great bodily harm or death and may only use such force as he reasonably believes is necessary to prevent or terminate the danger. The jury instruction for self-defense makes it clear that the focus on the reasonableness of a defendant's view; a belief can be reasonable even though it is mistaken.

Because of the focus on the defendant's state of mind in a self-defense case, when this defense is raised, a criminal defendant is permitted to show that he reasonably believed that he was preventing or terminating an unlawful interference with his person. *McMorris v. State*, 58 Wis. 2d 144, 152 (Wis. 1973) states, "When the issue of self-defense is raised in a prosecution for assault or homicide and there is a factual basis to support such defense, the defendant may, in support of the defense, establish what the defendant believed to be the turbulent and violent character of the victim by proving prior specific instances of violence within his knowledge at the time of the incident."

Case law had been further developed that permits the defense to call witnesses who can corroborate his knowledge of a deceased's previous acts of violence. "A defendant should not be limited merely to his own assertion that he had knowledge of particular violent acts, but should be allowed to produce supporting evidence to prove the reality of the particular acts of which he claims knowledge, thereby proving reasonableness of his knowledge and apprehension and the

credibility of his assertion.” *State v. Daniels*, 160 Wis. 2d 85, 95-96 (Wis. 1991) *citing State v. McAllister*, 74 Wis. 2d, 246, 250-251 (Wis. 1991). The Daniels court further noted, “Evidence corroborating the defendant's self-serving testimony on the only issue in the case, the defendant's state of mind would be highly persuasive to the fact finder. The mere fact that the state does not contest the defendant's testimony about the victim does not obviate the defendant's need to bolster his own testimony with testimony of other witnesses, especially that of the victim himself.” *Id.* at 104 (Wis. 1991).

Such evidence is also admissible as habit evidence, Wis. Stats. Sec. 904.06(1), which states that “evidence of the habit of a person ... whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. When habit evidence goes to the core of a defense its probative value is not "substantially outweighed" by the danger of unfair prejudice, *State v. White*, 2004 WI App. 78 ¶ 17.

Failure to admit such evidence would violate Mr. Client’s constitutional right to compulsory process and to present a defense under the United States and Wisconsin State Constitutions., see *Chambers v. Mississippi* 410 U.S. 284, 300-02 (1973), *State v. St. George*, 2002 WI 50.

THIS MOTION is brought subject to jurisdictional objections.

Dated at \_\_\_\_\_ Wisconsin this \_\_\_\_\_.

Respectfully submitted

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NAME ATTORNEY  
State Bar \_\_\_\_\_  
Attorney for Defendant

P.O. Address:  
Office address & Phone