

STATE OF NEW YORK
ERIE COUNTY COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

MEMORANDUM OF LAW
Indictment No. [REDACTED]

STATE OF NEW YORK)
COUNTY OF ERIE) ss.
CITY OF BUFFALO)

[REDACTED], ESQ. an attorney licensed to practice in the courts of this State, affirms the truth of the following statements under penalties of perjury.

1. I am counsel to the defendant, who is charged in this indictment with assault in the first degree (Penal Law § 120.10[1]) and attempted assault in the second degree (Penal Law §§ 110.00, 120.05[2]).
2. Please allow this affirmation to serve as a Memorandum of Law in further support of the defendant's application for a Justification Charge to the Jury. This affirmation is made based upon my personal knowledge and, more specifically, the trial testimony before this Court.

The defendant is entitled to the justification charge as to both counts.

"Viewing the record in the light most favorable to the defendant, a court must determine whether any reasonable view of the evidence would permit the factfinder to conclude that the defendant's conduct was justified. If such evidence is in the record, the court must provide an instruction on the defense" (*People v. Rayford*, 213 AD3d 1337 [4th Dept. 2023]).

Based on (i) [REDACTED] admission that, while drinking, he initiated the encounter by going into the bathroom to accost the defendant, (ii) [REDACTED] testimony that [REDACTED] was yelling and went to the bathroom to "confront" the defendant, and (iii) [REDACTED] testimony that the defendant called from the restaurant and told him that his life was being threatened and, more specifically, that someone threatened to kill him, the jury could reasonably conclude that [REDACTED] was the initial aggressor.

There is no question, based on [REDACTED] testimony, that the defendant actually believed that his life was in danger. The issue is whether "a reasonable person in [the] defendant's position would have held that belief under the circumstances" (*People v. Grady*, 40 AD3d 1368 [3rd Dept. 2007]). The belief is reasonable when you put yourself in the position of someone in a state of anxiety, in a vulnerable position -- sitting in a bathroom stall with no means of escape -- being accosted by an angry stranger.

Any issue with [REDACTED] credibility is an issue for the jury, and his account is partially corroborated by the body camera footage in evidence. The fact that [REDACTED] showed up on scene as the defendant was being arrested further supports [REDACTED]'s testimony that the defendant did call [REDACTED] earlier and asked him to quickly come to the location at issue. [REDACTED] statements to the police on scene further corroborate that he has been on the phone with the defendant.

As far as the duty to retreat, there was nowhere for him to retreat to; he was in the bathroom, and as far as he knew, the threat was right outside.

Body camera footage of Officer Hensley, see Exhibit A in evidence starting at 2:57, documents [REDACTED] telling the police that the altercation started in the bathroom, that [REDACTED] was stabbed either in the bathroom or right outside and that [REDACTED] fell to the ground immediately in front of the kitchen, pointing on camera to the spot. This contradicts [REDACTED] trial testimony that he was not stabbed in the bathroom nor in front of the kitchen but much later, in the restaurant outside of the camera's views.

Further, on Lt. [REDACTED] body camera, in evidence as exhibit M at 1:45-1:51, [REDACTED] states [REDACTED] encountered him in the bathroom, there was a whole thing, [REDACTED] felt on the ground, and I came and I pushed the guy into the kitchen". This statement, in timeline order, establishes that [REDACTED] was stabbed before falling to the ground in front of the kitchen (not in the restaurant part as [REDACTED] alleges) and before [REDACTED] pushes the defendant into the kitchen. The defendant is alleged to have attempted to stab [REDACTED] after [REDACTED] admittedly pushes him into the kitchen as is also evidenced by Exhibit N, the limited surveillance from inside the establishment.

Most telling as to where the incident occurred is Exhibit K in evidence, Officer [REDACTED] body camera at 19:20-19:30 with the paramedic reporting to the officer that [REDACTED] "someone stabbed me in the bathroom". This is further supported by Officer [REDACTED]'s account to medical staff at exhibit L, video 2015, starting at 4:55, wherein he reports that [REDACTED] was stabbed in the bathroom.

Taken in the light most favorable to the defense, there is evidence to support that the altercation and stabbing occurred in the bathroom, a place where the defendant was confronted, trapped, vulnerable and had no means of escape.

It is therefore, for all of the reasons above and the arguments as made on the record during the charge conference of [REDACTED] 2023, respectfully requested that the justification charge be given to the jury.

DATED: [REDACTED]
Buffalo, New York

[REDACTED]