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STATE OF WISCONSIN

COURT OF APPEALS DISTRICT IV

06-05-2015

State of Wisconsin,
Plaintiff-Respondent,

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

v.

Appeal No. 2015AP51CR

Susan P. Resch,
Defendant-Appellant.

Circuit Court Case No. 2014CM1929

ON APPEAL FROM THE CIRCUIT COURT FOR DANE COUNTY,
THE HONORABLE WILLIAM E. HANRAHAN, PRESIDING

BRIEF OF DEFENDANT-APPELLANT

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STATEMENT OF ISSUES

1. Did the court error in not following through with the subpoenaed witnesses?
2. Was there error in the investigation of the case since it was all based on hearsay and the investigator did not sign the report nor state his or her name on the report?

STATEMENT OF THE CASE

Susan subpoenaed her star witness in the case and planned to use the strategy of questioning the witnesses against her and revealing that their stories did not collaborate, but most of the witnesses both on the opposing side and her side did not show up to court. Realizing this, Susan asked at the onset of the final court hearing to postpone the hearing until the witnesses were made to show up to court. The Honorable Judge Hanrahan declared, "We will see how far we can get." This was a gross injustice, especially because Jamila who gave false testimony showed complete contempt of court by not bothering to show up for the court hearing and thereby violating Susan's Due Process rights by not being able to question and then cross examine the witnesses against her. Susan's rights were violated in that she was not allowed to have witnesses on her behalf.

When Susan R. read the investigation. She was shocked that the detective did not put his or her name anywhere on the report and did not sign the report - nor did the Assistant District Attorney sign the complaint. Upon reading the report, it was evident that the investigator did no face-to-face questioning of anyone in the case. The whole report was based on hearsay. This kind of investigation falls short of justice and fairness and is against "due process." Testimony based on hearsay is inadmissible evidence in a court of law.

STATEMENT OF THE FACTS

1. On October 16, 2014, Susan R. was informed that she could not fill in the blanks of the court appointed form with the name and address of the lawyer agreeing to take the case.
2. On November 10, 2014, Susan R. decided to forgo the expense of a lawyer and decided to represent herself.
3. Susan subpoenaed Ken Horenkamp to come to court and had prepared to subpoena her other witnesses, but needed more time to locate them.
4. On December 11, 2014, Susan R.'s witnesses were not in court and she asked for the court to be adjourned so that the witnesses on both sides could be made to come to court for the hearing

ARGUMENT

The Sixth Amendment to the Constitution of the United States guarantees that: the defendant shall “be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.” I rest my case. The main person who made up lies against me did not bother to grace the court with her presence and, instead, chose “contempt of court.” My whole case rested on questioning the witnesses against me and proving that their stories did not corroborate.

Susan R. was able to hand deliver one of the subpoenas, but the witness did not make it to court. Susan R. had prepared the subpoenas for her other witnesses and had brought the forms to court and asked Judge Hanrahan for more time to serve the subpoenas so that her witnesses could come to court. It is Susan R.’s right “to have compulsory process for obtaining witnesses in (her) favor” according to Amendment Six of the United States Constitution and according to the “due process” clause of the Fifth and Fourteenth Amendment of the U.S. Constitution. Susan R. needed to have the witnesses on the plaintiff’s side who were subpoenaed to show up to court. Pursuant to *Pointer v. Texas* and *Washington v. Texas*, Susan R. has the right to cross examine the witnesses against her and to obtain witnesses in her favor through the Sixth and Fourteenth Amendments. These are fundamental rights to a fair trial and Susan R.’s rights were violated. The purpose of these rights is to be able to establish a defense.

ARGUMENT

In *Pointer v. Texas*, the court held that “the right granted to an accused by the Sixth Amendment to confront the witnesses against him, which includes the right of cross examination is a fundamental right essential to a fair trial and is made obligatory on the States by the Fourteenth Amendment. Pp. 300 U.S. 403-406.” (Constitution, Annotated, Library of Congress, 2014) Susan R. was not able to confront nor cross examine most of the witnesses against her because they did not bother to show up for court.

In *Washington v. Texas*, the court held that “the right under the Sixth Amendment of a defendant in a criminal case to have compulsory process for obtaining witnesses in his favor applies to the States through the Fourteenth Amendment. Pp. 388 U.S. 17-19.” (Constitution, Annotated, Library of Congress, 2014) Susan R. asked for more time to be able to have witnesses come to court so that she could have a proper defense and this was not allowed.

The initial complaint was all based on hearsay. Hearsay is “A statement made out of court that is offered in court as evidence to prove the truth of the matter asserted.” (Burton's Legal Thesaurus, 4E. © 2007 by William C. Burton) The original complaint was not based on any face-to-face interviews and should be scratched from the record.

CONCLUSION

Susan P. Resch is asking the court to dismiss this case based on lack of confrontation of witnesses against her and lack of compulsory process to have witnesses appear on her behalf and lack of an adequately performed investigation. It is a gross injustice to put a bad mark on someone's record that is not justified and not proven beyond a shadow of a doubt. I have the right to question witnesses against me and I also have the right to have witnesses testify on my behalf according to my Fifth, Sixth and Fourteenth Amendment Rights.

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

V AMENDMENT TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

VI AMENDMENT TO THE UNITED STATES CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense

XIV AMENDMENT TO THE UNITED STATES CONSTITUTION

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CASE LAW

Pointers v. Texas, 380 U.S. 400 (1965)

Washington v. Texas, 388 U.S. 14 (1967)

CERTIFICATE OF WORD/PAGE COUNT

I hereby certify that this brief conforms to the rules contained in WI Statutes §§ 809.19(8) (d) for the brief and appendix produced with a proportional serif font. The length of this brief is 13 pages, 1773 words.

Dated this 28th day of May, 2015

Signed:

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of WI Statute Rule §§ 809.19(8)(b) and (c) in that it is: proportional serif font minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 1773 words.

Dates this 28th day of May, 2015

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CERTIFICATION OF MAILING

I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail on May 28th, 2015. I further certify that if the U.S. mail is used that the brief and appendix was correctly addressed and postage was pre-paid.

Dated this 28th day of May, 2015

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 28th day of May, 2015.

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