STATE OF WISCONSIN

C O U R T O F A P P E A L S

District I

Case No. 2015AP000522 CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

ENNIS BROWN,

Defendant-Appellant

ON APPEAL TO REVIEW THE JUDGMENT OF CONVICTION ENTERED ON OCTOBER 23, 2013, AND THE DECISION AND ORDER DENYING MOTION FOR POSTCONVICTION RELIEF ENTERED ON MARCH 4, 2015, THE HONORABLE DAVID BOROWSKI PRESIDING ON BOTH, BOTH ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY.

BRIEF AND APPENDIX OF THE APPELLANT

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ISSUES PRESENTED

I. Whether the trial court had erred in denying Defendant's pretrial Motion to Dismiss for Violation of Speedy Trial when Defendant's Circumstances met all of the Legal Requirements for Dismissal under the Relevant and Applicable United States Supreme Court and Wisconsin case law?

Trial Court Answered: No.

I. Whether the trial court had erred in denying Defendant's Motion for Postconviction Relief alleging that the trial court had clearly erred in allowing Defendant to proceed pro se when the facts and circumstances at the trial level proceedings, to include a psychological report, clearly indicated that Defendant was not competent to proceed pro se?

Trial Court Answered: No.

POSITION ON ORAL ARGUMENT AND PUBLICATION

This Appeal involves issues of law which are not settled. Arguments need to be presented in more detail in oral argument. Therefore, oral argument and publication are requested.

STATEMENT OF THE CASE

Mr. Ennis Brown was charged in a nine Count Criminal Complaint dated July 30, 2012. The nine Counts charged Defendant with three Counts of Second Degree Sexual Assault, contrary to Wis. Stats. 940.225(2)(a), and 939.50(3)c; two Counts of Incest of a Child, contrary to Wis. Stats. 948.06(1) and 939.50(3)c; one Count of Kidnapping, contrary to Wis. Stats. 940.31(1)(a), and 939.50(3)c; one Count of Child Enticement, contrary to Wis. Stats. 948.07(3) and 939.50(3)(d), one Count of Exposing Genitals or Pubic Area, contrary to Wis. Stats. 948.10(1) and (1)(a) and 939.50(3)(i); and finally one Count of Attempt Kidnapping (Carries Forcibly), Use of

a Dangerous Weapon, contrary to Wis. Stats. 940.31(1)(a), 939.50(3)c, 939.32, and 939.63(1)(b). The charges alleged that the Defendant had sexually and physically abused his daughter, AB, between the dates of May 23, 2012 and May 27,2012. Defendant faced a total of two hundred and ninety three years and six months. (2:1-6).

On August 10, 2012, a preliminary hearing began. However, prior to the hearing, the State filed an Amended Criminal Complaint. This Count was a forty two Count Criminal Complaint. The first nine Counts were the same nine Counts as charged in the original Criminal Complaint. These were the same nine Counts that alleged that Defendant had sexually and physically abused his daughter, AB. However, the remaining thirty three Counts alleged numerous Counts of Second Degree Sexual Assault of a Child, Incest with a Child, Incest of a Child, First Degree Sexual Assault of a Child, Kidnapping, Child Enticement, Attempt First Degree Sexual Assault of a Child (Contact), Attempt Incest with a Child, Physical Abuse of a Child, False Imprisonment, and Incest. The charges alleged that Defendant had, over a period of several years, physically and sexually abused not only his daughter AB, but his other daughters BYB, ELB, KDB, and BNB. The additional charges totaled over eleven hundred years of exposure above the original almost three hundred years in the initial Criminal Complaint. (5:1-20).

At the August 10, 2012 portion of the preliminary hearing, the only witness that testified for the State was AB. (96:11). Attorney Michael Hicks represented him at the preliminary hearing.

The preliminary hearing continued on August 24, 2012. At that time, three additional witnesses testified. After the hearing, the trial court found probable cause and bound Defendant over for trial. Trial counsel had indicated that Defendant wanted to make a Speedy Trial Demand. (97:39-40). Once again, Michael Hicks was Defendant's attorney.

On September 5, 2012, the trial court, Honorable David Borowski presiding, conducted an arraignment hearing. At that time, Defendant entered not guilty pleas to all forty two Counts of the Information. Furthermore, Defendant entered a Speedy Trial Demand on that date. (98:3-4). The Information contained the same forty two Counts as in the Amended Criminal Complaint. The State had filed the Information on September 4, 2012. (6:1-9).

A final pretrial hearing occurred on November 30, 2012, Michael Hicks continued to represent the Defendant. At that time, the trial court had adjourned the trial date. The trial court had indicated that it was complex due to the number of victims and the number of counts. (99:14).

Eventually, the trial court conducted a status hearing on defense counsel's representation of Defendant. Michael Hicks once again appeared for the Defendant. This hearing occurred on March

29, 2013. The trial court appointed a new attorney for Defendant. (100:7).

On May 14, 2013, the new attorney, Michael Plaisted, made a motion to withdraw as counsel. The trial court allowed attorney Plaisted to withdraw. (102:10-11). Defendant never requested that the trial court remove Mr. Plaisted.

On June 14, 2013, Nathan Opland-Dobbs appeared on behalf of the Defendant at a status hearing. This was Mr. Opland-Dobbs' first appearance. At that time, Mr. Dobbs indicated that Defendant wanted him to withdraw and wanted to represent himself. (103:3). On that date, the trial court took Mr. Opland-Dobbs withdrawal motion under advisement. The court indicated that it might eventually allow Defendant to represent himself. However, the trial court ordered a competency evaluation. (103:13-14).

On June 26, 2013, Dr. John Pankiewicz from the forensic unit prepared a competency evaluation report.(18:1-4).

On June 28, 2013, the trial court conducted another status hearing. The court concluded that Defendant was competent to stand trial and assist his counsel, nothing more. The court adjourned the matter for another status hearing after Defendant had been removed from the courtroom. (104:3, 6).

On July 15, 2013, another status conference occurred. The trial court indicated that it would take the proceedings under advisement, but that Defendant would have standby counsel.

(105:23).

Two days later, on July 17, 2013, the trial court allowed Mr. Opland-Dobbs to withdraw and Defendant to represent himself. The court appointed Scott Anderson as standby counsel. (106:3-5).

On August 13, 2013, Defendant, through his standby counsel, filed a Notice of Motion and Motion to Dismiss - Violation of Right to Speedy Trial (henceforth "Motion to Dismiss"). (22:1-13).

The court had a Motion hearing on August 14, 2013. The trial court indicated that it was taking Defendant's Motion to Dismiss under advisement. The trial court adjourned the hearing until September 13, 2013. It ordered that the October 7, 2013 trial date stand. (107:16).

On September 11, 2013, Defendant filed a two page Supplemental Brief in Support of his Motion to Dismiss. (23:1-2). The State filed a letter concerning the Motion on September 13, 2013. (24:1).

On September 13, 2013, the trial court conducted a Motion hearing on Defendant's Motion to Dismiss. At that time, Thomas Reed, regional attorney manager for the Milwaukee Trial Division of the State Public Defender's office as well as Keith Sellen from the Office of Lawyer Regulation testified.

The Motion hearing continued on September 16, 2013. Mr. Sellen continued to testify.

On September 16, 2013, the trial court orally denied Defendant's Motion to Dismiss. (109:12-26; A 114-128).

On September 30, 2013, the trial court conducted a final pretrial hearing. The court had concerns about the Defendant's behavior. (110:5-6). On that date, the State also indicated that it had concerns about Defendant's behavior, based upon his prior history in court, resulting in him being removed from court. (110:6-8). The trial court ordered a second competency evaluation, with a request that the evaluating doctor also evaluate the Defendant for competence to proceed pro se. The trial court adjourned the hearing. (110:18-19).

On October 2, 2013, Dr. Pankiewicz prepared a second competency report. The doctor had concerns about Defendant's ability to represent himself. Also, the doctor found Defendant competent to stand trial and was not suffering from a mental disease or defect, in that report. (29:1-4).

On October 4, 2013, the trial court conducted one final pretrial hearing. The trial court discussed Dr. Pankiewicz's competency report. The court read the doctor's analysis about Defendant's ability to represent himself, as discussed in the preceding paragraphs of this Motion. The court found Defendant competent to stand trial. Also, after a colloquy, the trial court allowed Defendant to proceed pro se at trial with Scott Anderson as standby counsel. (111:31, 34-35).

Jury trial commenced on October 7, 2013. After multiple issues, such as the Defendant allegedly bullying his children while they

were testifying, Judge Borowski removed Defendant's right to represent himself pro se. Eventually, the trial court removed the Defendant from the trial altogether. Scott Anderson represented the Defendant partially through the trial. Defendant was convicted of multiple Counts in the Information. Judge Borowski eventually sentenced him to approximately one hundred and fifty years of initial confinement. (49:1-8; A 106-113).

On January 15, 2015, Defendant filed his Motion for Postconviction Relief. By this Motion, he had argued that the trial court had clearly erred in allowing him to proceed pro se. He had argued that he was not legally competent to proceed pro se and that he should, therefore, be allowed a new jury trial. Defendant had attached Exhibits to this Motion. (82:1-71).

In response to Defendant's Postconviction Motion, the trial court issued an Order for briefing schedule dated January 16, 2015. (83:1). The State responded on February 19, 2015. (89:1-41). The Defendant submitted a Reply Brief on February 27, 2015. (90:1-10).

On March 4, 2015, the trial court had issued a three page written Decision and Order Denying Defendant's Postconviction Motion. (91:1-3; A 129-131).

Defendant filed his Notice of Appeal in a timely fashion. (92:1-12). This Appeal now follows. Defendant is filing his Appellant's Brief according to the schedule issued by the Court.

STATEMENT OF THE FACTS

Mr. Ennis Brown was charged in a nine Count Criminal Complaint dated July 30, 2012. The nine Counts charged Defendant with three Counts of Second Degree Sexual Assault, contrary to Wis. Stats. 940.225(2)(a), and 939.50(3)c; two Counts of Incest of a Child, contrary to Wis. Stats. 948.06(1) and 939.50(3)c; one Count of Kidnapping, contrary to Wis. Stats. 940.31(1)(a), and 939.50(3)c; one Count of Child Enticement, contrary to Wis. Stats. 948.07(3) and 939.50(3)(d), one Count of Exposing Genitals or Pubic Area, contrary to Wis. Stats. 948.10(1) and (1)(a) and 939.50(3)(i); and finally one Count of Attempt Kidnapping (Carries Forcibly), Use of a Dangerous Weapon, contrary to Wis. Stats. 940.31(1)(a), 939.50(3)c, 939.32, and 939.63(1)(b). The charges alleged that the Defendant had sexually and physically abused his daughter, AB, between the dates of May 23, 2012 and May 27,2012. Defendant faced a total of two hundred and ninety three years and six months. (2:1-6).

On August 10, 2012, a preliminary hearing began. However, prior to the hearing, the State filed an Amended Criminal Complaint. This Count was a forty two Count Criminal Complaint. The first nine Counts were the same nine Counts as charged in the original Criminal Complaint. These were the same nine Counts that alleged that Defendant had sexually and physically abused his daughter, AB. However, the remaining thirty three Counts alleged

numerous Counts of Second Degree Sexual Assault of a Child, Incest with a Child, Incest of a Child, First Degree Sexual Assault of a Child, Kidnapping, Child Enticement, Attempt First Degree Sexual Assault of a Child (Contact), Attempt Incest with a Child, Physical Abuse of a Child, False Imprisonment, and Incest. The charges alleged that Defendant had, over a period of several years, physically and sexually abused not only his daughter AB, but his other daughters BYB, ELB, KDB, and BNB. The additional charges totaled over eleven hundred years of exposure above the original almost three hundred years in the initial Criminal Complaint. (5:1-20).

At the August 10, 2012 portion of the preliminary hearing, the only witness that testified for the State was AB, one of Defendant's daughters. (96:11). Attorney Michael Hicks represented Defendant at the preliminary hearing.

The preliminary hearing continued on August 24, 2012. At that time, three additional witnesses testified. These were Kevin Armbruster, Cindy Cartson, and Angela Phillips, in that order. The first witness was a detective with the Milwaukee Police Department Sensitive Crimes Unit. The last two witnesses were Milwaukee Police Officers, also with the Sensitive Crimes Unit. These three individuals testified as to hearsay statements provided by BYB, EB, and KDB, respectively. These were Defendant's other children. After the hearing, the trial court found probable cause and bound

Defendant over for trial. Trial counsel had indicated that Defendant wanted to make a Speedy Trial Demand. (97:39-40). Once again, Michael Hicks was Defendant's attorney.

On September 5, 2012, the trial court, Honorable David Borowski presiding, conducted an arraignment hearing. At that time, Defendant entered not guilty pleas to all forty two Counts of the Information. Furthermore, Defendant entered a Speedy Trial Demand on that date. (98:3-4). The Information contained the same forty two Counts as in the Amended Criminal Complaint. The State had filed the Information on September 4, 2012. (6:1-9).

A final pretrial hearing occurred on November 30, 2012, Michael Hicks continued to represent the Defendant. Defendant had indicated that his attorney had not visited with him. (99:3). Trial counsel requested the tolling of Defendant's Speedy trial. However, Defendant himself still wanted the Speedy trial. (99:6, 8). At that time, the trial court had adjourned the trial date. The trial court had indicated that it was complex due to the number of victims and the number of counts. (99:14). This, even though the victims were all family members and the counts overlapped factually.

On November 30, 2012, Defendant had indicated that he still wanted to proceed with the trial. He indicated that he could not live in jail. The trial court's response was that he should post the $200,000 bail. Defendant wanted to proceed without trial counsel, which request the trial court denied. He again indicated

that his attorney does not even visit with him. Defendant became belligerent and accused everyone of conspiring against him. Due to his belligerence, the trial court had him removed from the courtroom. (99:15-16).

Eventually, the trial court conducted a status hearing on defense counsel's representation of Defendant. Michael Hicks once again appeared for the Defendant. This hearing occurred on March 29, 2013. At that time, Defendant repeatedly indicated that Hicks was not his attorney. The colloquy relevant to this present Motion went as follows:

> THE DEFENDANT: He's not my attorney. He's not my attorney. He's not my attorney. He is not my attorney. I do not want that man for my attorney.
>
> THE COURT: Mr. Brown, if you stop talking —
>
> THE DEFENDANT: He is not my attorney. I do not want him for my attorney. No, this is a bunch of bullshit with no response. You know it's all lies. You know this is wrong.
>
> THE COURT: If you stop talking —
>
> THE DEFENDANT: No, you tooken everything from me. No, fuck you. Fuck all of you, you sorry sack of shit. You call yourself a regulator of law? No, you break the law. You sick son of a bitch. All of you sick motherfuckers. You break the law and then call yourself trying to pass justice on me. You motherfuckers don't even know. All you had to do is read the fucking report, you stupid son of a bitch. You sorry motherfuckers.
>
> You can't hurt me. I don't give a fuck. I tried to kill myself last night. You ruined my life, and I want to die. Keep on pushing that button. You can't hurt me, boy. I already told you that. Now like I said fuck you.

THE COURT: Here's the situation. The defendant –

THE DEFENDANT: You have no authority over me. You have nothing over me. All you think is have this body for the 2000 years that you people are trying to charge me with. That's it. But as far as everything else, suck my dick, you piece of shit.

THE COURT: Apparently, Mr. Brown is a little upset.

THE DEFENDANT: Apparently, my ass, you belligerent, ignorant asshole. How you fuck everybody else - how you turn around and push court dates back and screwing people over and play these fucking games and make these fucking kids sit in the jail all this time and make them accept pleas and shit. You can tase me all you want, son.

THE COURT: Mr. Brown is actively resisting. He has about 8, actually 10 or 11 bailiffs around him. He is being wildly out of control. He's being belligerent. This started earlier this morning.

THE DEFENDANT: ...then you bring me into court today out of the clear blue trying to tell me that this fucking asshole is my attorney. I got a grievance filed against him with the state bar. I even wrote you a letter to file. Then what did you do? You kept me locked in. You didn't let me come to court to do my motions or anything. Then you laughed at me last time I was here. You treat me like shit. You laughed at me. I was begging. You laughed at me.

THE COURT: Mr. Brown –

THE DEFENDANT: You laughed at me, man. Fuck you and fuck all of you. I don't give a fuck. You ruined my life, you piece of shit.

THE COURT: Mr. Brown started this incident when he started yelling and screaming and swearing at his attorney.

THE DEFENDANT: I'm going to keep on going until I'm out of this courtroom. I do not recognize your authority. You have no authority over me. Neither you or Mr. Hicks or this lady over here have any authority over me at all.

THE COURT: The defendant started this by swearing at Mr. Hicks, and then he spit at Mr. Hicks. He's in multiple restraints. He's in a spit mask. And in my 10 years on the bench, I've never – and I've seen it all.

THE DEFENDANT: And your 10 years on the bench you've always been an asshole. Just like you and your baby mother are turning around trying people and their cases. Yeah, your baby mother is the Attorney Ann Bowe, right? Ann Bowe, is that your baby mother? Lady clerk, are you the baby mother?

THE COURT: Mr. Brown, you're operating under some misconceptions.... ...I'm allowing Mr. Hicks to withdraw.

THE DEFENDANT: I'll be dead before you see me again.

THE COURT: ...The defendant spit on Mr. Hicks. As I said in all my years of doing this, this defendant is more out of control than anyone I've ever seen. He's in active restraints. My court reporter took down all the yelling, swearing, belligerence, 10 or 12 deputies holding him down. ... ...he's the baddest, worst bail risk I've seen in all my time as an attorney and a judge.... I do not want him out of custody. He's a danger to all the people he has allegedly assaulted. He's made active threats now to the DA, Mr. Hicks and the Court.

THE DEFENDANT: Did anybody hear me threaten somebody; who did I threaten?

...

THE DEFENDANT: Everything you people say is a bunch of lies. You forget, so I tell you what. I would like to see if you can explain why I tried to kill myself over that. You know I tried to kill myself twice, right? Like I said you ruined my fucking life and I will again.

...

THE DEFENDANT: We have nothing to discuss. Fuck you. Tase me, hit me. Come on, tase me. I don't want a new date. Last time I was in here they laughed at me and treated me like shit, took away my rights. I don't want to talk to you no more. (100:3-8).

Clearly, on March 29, 2013, Defendant was out of control, suicidal, had spit on his attorney, highly disrespectful to the court and his counsel. He had spat on his counsel. He had exhibited signs of delusion by his accusations that Ann Bowe, and then the court clerk, had been the trial court's "baby mothers." The trial court appointed a new attorney for Defendant.

Furthermore, on March 29, 2013, Defendant had indicated that he had filed a grievance against Mr. Hicks.

On May 14, 2013, the new attorney, Michael Plaisted, made a motion to withdraw as counsel. He had indicated that Defendant wanted him to file frivolous motions.

However, on May 14, 2013, the trial court had a discussion with the Defendant concerning Mr. Plaisted's representation. At that time, the Defendant indicated that the trial court was violating his rights. The trial court indicated that Defendant had spat on his attorney, and had been highly belligerent and threatening, on March 29, 2013. The trial court then told the bailiffs to "...Get him out of here. I've had it with him today. Get him out." The trial court then allowed attorney Plaisted to withdraw. Furthermore, the trial court indicated that Defendant could not cooperate. The court indicated that it would see if Defendant could find someone who could represent him. Otherwise, he would represent himself. (102:10-11).

Clearly, on May 14, 2013, the trial court still found Defendant uncooperative. However, the trial court indicated that if Defendant could not cooperate with counsel then he would represent himself. Unfortunately, this is not the legal standard for self-representation.

On May 14, 2013, Defendant had indicated that the court had taken away his right to speedy trial against his will. This had happened on November 20, 2012. (102:10-11). Defendant never requested that the trial court remove Mr. Plaisted.

On June 14, 2013, Nathan Opland-Dobbs appeared on behalf of the Defendant at a status hearing. At that time, Mr. Dobbs indicated that Defendant wanted him to withdraw and wanted to represent himself. Defendant indicated that his public defenders were just stalling justice by keeping him incarcerated. (103:3). The trial court indicated that it was not sure that Defendant was capable of representing himself on a case that charged 42 felonies where he was facing over a thousand years in prison. (103:6).

Defendant, on June 14, also indicated that his attorneys were sadistic, and were all conspiring to intimidate and threaten him. (103:7).

On June 14, 2013, the trial court took Mr. Opland-Dobbs withdrawal motion under advisement. The court indicated that it might eventually allow Defendant to represent himself. However, the court indicated the following:

> THE COURT: "I've seen some erratic behavior from Mr. Brown over the course of the last few months. He has blown up or lost control in court in front of me at least once, possibly twice, but there was one incident that was wildly out of control that was relative to Mr. Hicks being on the case, and then about swearing and screaming every bit of foul language one could imagine directed, mostly at the court, towards Mr. Hicks, Madam DA. Mr. Plaisted did not tell me anything that would violate attorney/client privilege, but he made it clear to me that there was some erratic behavior.
>
> Most importantly, I've seen erratic behavior, including Mr. Brown making comments about a conspiracy, making comments about people being out to get him, making comments about there being no evidence.
>
> Before I could realistically consider whether or not Mr. Brown could represent himself, I need to know that he's competent to, first of all, assist his own counsel and then go from there, and I have concerns in that area, significant concerns that have been borne out by Mr. Brown's actions; requesting multiple attorneys, not being able to relate to now multiple attorneys, his very erratic, at times, behavior in court, his statements as I said about conspiracy and other things. So, I'm ordering a competency evaluation." (103:13-14).

At the end of the hearing on June 14, the Defendant indicated that "I just want to object to it, and say there's no evidence. Why without no evidence of allegations of the supposed victims, they haven't shown up. It's like the priests or anybody else that's accused of heinous crimes. I mean if the victims actually show up and then because if enough people say that you're an antichrist, there's evidence of an antichrist, do you know what I'm saying?" In response, the court indicated that the Defendant's comments about priests or the antichrist reinforced the court's decision to order

a competency evaluation. (103:16).

On June 14, clearly, the trial court conveyed and summarized its long standing concerns about Defendant's ability to represent himself and the history of his conduct. Furthermore, the court found that the Defendant's own comments on that date about priests and the antichrist further solidified its concerns about his competency.

On June 14, Defendant's third attorney, Nathan Opland-Dobbs, made his first appearance. (103:3). Defendant had indicated that his first attorney, Michael Hicks, had never come to see him once in jail. Defendant had also indicated that this attorney had never obtained an investigator to investigate the matter. Defendant believed that Hick's actions in waiving the speedy trial were not on the Defendant's behalf. (103:6-7). Defendant also indicated that Hicks had waived his right to a speedy trial without first consulting with him. Defendant again had indicated that Hicks had never visited with him in jail. (103:9).

On June 26, 2013, Dr. John Pankiewicz from the forensic unit prepared a competency evaluation report. That report indicates that Defendant had been on suicide watch numerous times. He had complained about hopelessness. He had been prescribed an antidepressant agent, Fluoxetine. This medication had been prescribed during a period of time when Defendant had lost weight, was not eating and having great difficulty sleeping. Defendant had

indicated that, since taking the medication, he has caught up with his appetite, and that the medication might have had some positive benefit. The report also indicated that a review of clinical records at the jail concur that Defendant received some antidepressant treatment secondary to a tentative diagnosis of clinical depression. The doctor indicated that he no longer met the criteria for clinical depression, but that the resolution of the symptoms had come from the antidepressant medication and his adjustment to circumstances. The doctor found that Defendant was competent to stand trial, but did not provide an opinion concerning his request to represent himself. (18:1-4).

On June 28, 2013, the trial court conducted another status hearing. At that time, there was an initial commentary that went as follows:

> MR. OPLAND-DOBBS: "...Let the record reflect that Mr. Brown presents in custody with heightened security, extra-personnel, in a wheelchair, and I believe with stun technology on his body somewhere.
>
> THE COURT: That's correct. Based on his prior behavior, the threat that he's presented both in court and out of court, the Sheriff's Department in this case, I'll allow, not that I have a choice, but I'll allow Sheriff Clarke to make that decision. Yes, he's in a wheelchair. He's in a stun belt. He's in special needs. He's been disruptive in court and in the jail. He's in high risk. He's being monitored by a number of deputies.
>
> This is here for return on doctor's report. Based on Mr. Brown's erratic behavior, based on his inability to cooperate with, at least now, three attorneys, based on his statements last time about the devil, among other things, I ordered a competency evaluation.

Dr. Pankiewicz believes the defendant is competent to at least assist his counsel...” (104:3-4).

Defendant indicated that he felt that he had no alternative but to represent himself. The trial court corrected him by indicated that he had an alternative. However, the Defendant interrupted him and accused the court of being rude. The trial court then “threw” the Defendant out of the courtroom. (104:4-5).

Here, on June 28, the trial court now learned that the Milwaukee County Sheriff’s Department was having problems with the Defendant. The Sheriff had ordered the high security measures. Furthermore, the court had indicated that Defendant’s conduct was not just confined to the trial court. It existed in the jail as well. Furthermore, the court had noted that the Defendant was exhibiting disrespectful behavior in the courtroom. The court concluded that Defendant was competent to stand trial and assist his counsel, nothing more.

On July 15, 2013, another status conference occurred. Once again, Defendant appeared in court “...with the highest level of court security available.” Furthermore, his attorney was still Mr. Opland-Dobbs. Mr. Opland-Dobbs had filed a Motion to Withdraw. He acknowledged on that date that this was his Motion. He indicated that communication with the Defendant had so broken down that he could not represent himself anymore. The trial court asked to hear from the Defendant. The Defendant indicated that his rights had

been violated, and that the trial court had changed the laws as far as the Constitution statutes and the United States case statutes. The court found that Defendant was doing things like reinventing history as to how the case proceeded as well as referring to statutes that may or may not apply. The court indicated that this conduct did not evidence to it that the Defendant could capably represent himself. (105:3-4).

On July 15, the trial court again revisited Defendant's history of noncooperation with the court and prior counsel. Furthermore, the court found that none of Defendant's rights had been violated. The court found that delays had been caused solely by Defendant's conduct and his inability to work with attorneys. (105:6-7). Defendant insisted that Hicks had violated his rights, that Defendant believed that he was better off representing himself than having a lawyer who "bamboozled" him, and that the trial court was changing the constitutions. (105:10-12). The trial court then again conveyed concern about Defendant's ability to represent himself. (105:13). Defendant again asked for his constitutional rights. The trial court again indicated that Defendant's own "continued and borderline disruption of the proceedings, specifically being unable to cooperate with any attorney" was a problem. (105:15). Defendant accused the trial court of laughing at him and of waiving his rights. (105:16-17). Defendant then indicated that the Court Commissioner, Barry Slagle, had indicated

that he would throw the case out if the State did not provide any professional character witnesses. The State disputed this contention and indicated that the Commissioner's position was that the State needed to produce a witness to proceed with the preliminary hearing. (105:18-20). The trial court indicated that it would take the proceedings under advisement, but that Defendant would have standby counsel. (105:23).

Two days later, on July 17, 2013, the trial court allowed Mr. Opland-Dobbs to withdraw and Defendant to represent himself. The court appointed Scott Anderson as standby counsel. (106:3-5).

On August 13, 2013, Defendant, through his standby counsel, filed a Notice of Motion and Motion to Dismiss - Violation of Right to Speedy Trial (henceforth "Motion to Dismiss"). By this Motion, Defendant had indicated that he had been arrested on July 26, 2012. The preliminary hearing had lasted until August 24, 2012. He demanded a speedy trial at the close of that hearing. At the arraignment on September 5, 2012, he renewed the speedy trial, and that the trial court scheduled a trial date of December 5, 2012, with a final pretrial date of November 30, 2012. Defendant had indicated that the December 5, 2012 trial had been adjourned, with the trial court setting a new trial date (22:1-2).

In the Motion to Dismiss, Defendant also indicated that he had attempted to fire Hicks due to a failure to adequately represent him and his interests. He also indicated that, on September 20,

2012, he had filed a pro se discovery demand. Defendant also indicated that, during the Hicks' representation, Defendant had never received copies of the police reports or any discovery. (22:2).

The Motion to Dismiss also confirmed Defendant's statements to the trial court that, during the Hicks representation, Hicks had never visited with him at the Milwaukee County jail from the date of initial appointment through the November 30 final pretrial. No investigator had met with the Defendant. Hicks' first visit was the afternoon after the November 30, 2012 pretrial. (22:2). Defendant had attached jail records confirming this representation as Exhibit A to the Motion to Dismiss. (22:Exhibit A).

The Motion to Dismiss also indicated that Hicks was not licensed to practice law for at least a portion of the time that he was representing Defendant. The license had been suspended from at least September 27, 2012 through October 16, 2012. The license had been suspended as well as of June 14, 2012. Hicks license became suspended even after the original trial date had been removed, and the April 5, 2013 trial approaching. His license was again suspended from February 12, 2013 until March 11, 2013. Furthermore, the Motion indicated that, after the meeting on November 30, 2012, through Hicks' departure on March 29, 2013, he never met with the Defendant again in jail. On March 29, 2013, the trial court allowed Hicks to withdraw. However, Defendant never knew that he was

without counsel for a significant amount of time on a case with a speedy trial demand in place. (22:2-3).

The court had a Motion hearing on August 14, 2013. On that date, the trial court had indicated that it had originally adjourned the case due to its complexity, and Hicks' comments concerning needing more time to prepare. (107:7). The court did indicate that Defendant had asserted his right initially which had prejudiced the Defendant. (107:8). Standby counsel did indicate that, during the Hicks period, Defendant did not even have a lawyer. The State agencies did not do anything. Hicks could not be ready, regardless of his representations, because he never saw the Defendant. (107:10-11).

On August 14, 2013, Defendant had indicated that the court had forced him to keep Mr. Hicks and that this was in violation of Defendant's sixth and fourteenth amendment rights. The court found this claim belied by the record, farcical, and absurd. (107:11).

On August 14, 2013, the trial court indicated that it was not happy with Hicks or the Public Defender's office. The court indicated that Hicks had made a mess of this and other cases. (107-11-13). The court indicated that standby counsel had a valid point in that Hicks had never once so much as set foot over to meet with Defendant. (107-14).

On August 14, 2013, standby counsel also indicated that Hicks, even though he checked in on November 30, 2012, never actually met

with the Defendant. Defendant was latched to a chair and carrying on. (107:14-15).

On September 11, 2013, Defendant filed a Supplemental Brief in Support of his Motion to Dismiss. (23:1-2).

On September 13, 2013, the trial court conducted a Motion hearing on Defendant's Motion to Dismiss. At that time, Thomas Reed, regional attorney manager for the Milwaukee Trial Division of the State Public Defender's office as well as Keith Sellen from the Office of Lawyer Regulation testified.

Also, on September 13, 2013, Defendant had indicated that he had made multiple requests for a speedy trial. He also indicated that on September 5, 2012, he had requested that Hicks be removed from his case. He had also sent the trial court a letter dated September 20, 2012 asking that Hicks be removed. The letter indicated that Hicks was not doing his job to represent him. During the time around November 12, 2012 that Hicks had lost his license. Judge Stephanie Rothstein had addressed the issue with Hicks off of the record about his suspension. He claimed that he did not know anything about it, at that time. (108:6-7).

Standby counsel indicated on September 13, 2013 that the thrust of the Motion to Dismiss was that, legally and factually, did not represent Defendant for the period in 2012 up to his withdrawal in 2013. Hicks could not represent him because his license had been suspended. Also, Hicks never met with him, as

corroborated by the jail records. Counsel argued that this time should be attributed to the State because two state institutions, (1) the State Public Defender's office, and (2) the Officer of Lawyer Regulation did not send out notices to the courts, District Attorney's office, or anyone else during this time period. These were two state institutions that had allowed Defendant to proceed without a lawyer and then, immediately before trial, suddenly there's a request to adjourn because Hicks was not ready and there is a motion that there is no way that he could be ready. Hicks never saw Defendant. (108:23-24). Furthermore, Hicks purported investigator never saw Defendant during this time period either. Finally, Hicks had never provided Defendant with any discovery during this time period.

Standby counsel indicated that the institutional breakdown by state agencies must be attributed to the State. (108:24-25).

Tom Reed testified on September 13, 2013. He testified that Hicks had his law license suspended from at least September 27, 2012 to October 16, 2012, and then again for a decent period of time from February 12, 2013 through March 11, 2013. Hicks continued to represent Defendant during those time periods. Reed's office was aware of the 2012 suspension. (108:27-28). Nevertheless, Reed's office did not take him off of Defendant's case due to this suspension. (108:31).

Reed also testified on September 13, 2013 that he was also

aware of Hicks's 2013 suspension. This meeting was in March. Despite this suspension, Hicks was allowed to continue on with his representation of Defendant. (108:31-32). Reed testified that a lawyer under temporary suspension must suspend his or her practice of law until he or she clears up the suspension. (108:39).

Keith Sellen testified next. He testified that Hicks had been suspended from September 27, 2012 until October 16, 2012. He had also been suspended on February 12, 2013 and had been reinstated on March 11, 2013. Somebody under a suspension must stop practicing law. Hicks would not be able to appear in court or file papers. He could meet with his client in jail only for the purpose of notifying the client and protecting the client's interest because he could no longer represent the client. He would have to notify the client and the courts of the suspension. (108:44-46).

The Motion hearing continued on September 16, 2013. Mr. Sellen continued to testify. He testified that, during a period of attorney's suspension, he would not be allowed to draft briefs or to communicate with client, giving them advice, until readmitted. (109:3-5).

On September 16, 2013, the trial court denied Defendant's Motion to Dismiss. The court concluded that there was nothing along the lines of any concerted effort by the State, meaning the DA's office, to do anything whatsoever that was improper in this case. Neither the state nor the Milwaukee County courts knew of the two

temporary suspensions of Hicks. The court also concluded that Hicks had come to court and indicated that he was not able to adequately prepare for the case due to the counts and the number of alleged victims. The court also, on its own motion, had granted an adjournment despite the speedy trial demand due to the interests of justice and the case's complexity. The court also found that Hicks had been suspended for two periods. However, there had not been a policy that had provided for direct notification to the courts of a temporary suspension. The court also found that Defendant had not cooperated with his two counsel subsequent to Hicks, those being Mr. Plaisted and Mr. Opland-Dobbs. The court found that every single delay had been related to the complexity of the case and after that, Defendant's behavior. Subsequently, Defendant went pro se and filed the Motion to Dismiss. The court found that Defendant had the burden of proof of this Motion. The court found lacking Defendant's argument that the State did something to deprive Defendant of his right to a speedy trial. Furthermore, the trial court did indicate that it had scheduled the March 29, 2013 hearing because it had learned of Hicks's suspensions. The court would have addressed those issues on that date, and would have removed Hicks on that date. However, Defendant's own conduct on that date made that matter moot. Subsequently, Mr. Plaisted had to withdraw in May of 2013 due to Defendant's own conduct. Finally, Mr. Opland-Dobbs also had to withdraw at Defendant's demand. The court found no

intentional conduct by the State or Public Defender's office. (109:12-26; A 114-128).

Interestingly, the court had to remove Defendant from the courtroom during its oral ruling. The court found that Defendant was belligerent, mouthing off, and swearing at standby counsel. The court found that Defendant was getting wildly out of control, loud and disruptive. Defendant was soon thereafter returned to court, but in restraints, and with five bailiffs as extra security. (109:21-22).

On September 30, 2013, the trial court conducted a final pretrial hearing. At that time, Defendant accused the court of taking away his constitutional rights. Defendant indicated that he was charging the court with conspiracy, and he was ordering the sergeant to arrest him for violating his constitutional rights as of November 30. According to the Defendant, this was the date that the court took away his right to a speedy trial. Defendant also accused the court of conspiring with Mr. Anderson to turn around and get him to have the Defendant sign a motion to dismiss the violation of constitutional rights which he reported on September 16. So, Defendant accused the court of being on "conspiracy fail" and that the court had violated his constitutional rights, and that the court was on the federal level. The Defendant indicated that he would call the F.B.I. and ensure that the court did time for it and that the court was finished. Defendant indicated that the court had

to let him go. The court had concerns about the Defendant's behavior. (110:5-6).

On September 30, 2013, the State indicated that it had concerns about Defendant's behavior, based upon his prior history in court, resulting in him being removed from court. The State indicated that it could anticipate problems at trial based upon the Defendant's behavior. The State indicated that if Defendant's behavior was such that he became removed, it would make his self-representation very difficult. (110:6-8).

On September 30, 2013, Defendant indicated that he would comport himself appropriately in court. However, once again, Defendant indicated that, with the trial court's violations of his rights that it had done "so frequently," he could see where the should not be a need for the trial to proceed. Defendant believed that the trial court had violated his right to an attorney by not responding to a letter that he had written to the court on September 20, 2012. (110:9-10). Defendant also indicated that the trial court had given him attorneys that he refused and procrastinated, to keep him falsely incarcerated. Defendant indicated that his rights had been violated and that there was no need to proceed any further. (110:11-12).

On September 30, the trial court again indicated that Defendant's behavior that day were "...bizarre, outlandish and potentially distorted, in terms of distorted thinking, statements

that have been made by Mr. Brown." Based upon this conclusion, the trial court ordered a second competency evaluation by Dr. Pankiewicz. Defendant was making bizarre comments talking about a conspiracy, talking about how he was going to summon the F.B.I., and telling the court's bailiffs to arrest the trial court. The court found the comment about the conspiracy to be "...so far out there that even I don't know what he's talking about when it comes to that." The court found that his bizarre comments need to question his competency. (110:12-13).

The State indicated on September 30 that Defendant had the intellect and the ability to represent himself so long as he is competent and not currently suffering from some sort of mental condition that would impair that ability to understand the proceedings or the ability to defend himself. (110:14).

On September 30, the court concluded that Defendant was either at full antic mode or experiencing delusional thoughts. The court indicated that the evidence was abundant relative to his behavior as to whether there's an issue of competency. (110:16-17).

Standby counsel made a most telling and incisive comment on September 30. This comment, from a lawyer that had been dealing with the Defendant for over two months, went as follows:

> MR. ANDERSON: "Judge, what I was going to say is - and I haven't seen anything with my interactions with Mr. Brown and feel like he's not competent. Certainly my interactions with him of late and the refusal to provide

motions and witness list, that type of thing, and how this case is going to proceed, is clearly – he's not competent to represent himself in this trial. He just can't do it. I don't challenge his intellect or competency per so, but if a doctor is going to look at him, you know I think to the extent Dr. Pankiewicz can or whoever is going to do it that they look into that issue as well.

THE COURT: I agree.

MR. ANDERSON: We know where this is heading." (110: 17-18).

On October 2, 2013, Dr. Pankiewicz prepared a second competency report. In this report, the doctor noted that Defendant had decided to stop taking his antidepressant medications a few weeks ago. There were suicide gestures. Within hours of the examination, the Defendant made a gesture of self harm. On some occasions, Defendant exhibited perceptions that bordered on paranoid thought. These were perceptions about how he had been treated in the legal system as well as the motivations of some of the principal participants.

The October 2, 2013 competency report did discuss the matter of self-representation. The report indicated that Defendant had made a number of bad choices, bad decisions, and episodes of questionable behavior. Dr. Pankiewicz indicated that "...His judgement and choices do cause concerns about Mr. Brown's capacity to act as his own attorney. The record would suggest his actions might have derailed results favorable to his case. He has declined

to pursue potentially exculpatory evidence....Mr. Brown may continue to make questionable choices as well as demonstrate problematic behaviors." The doctor found Defendant competent to stand trial and was not suffering from a mental disease or defect, in that report. (29:1-4).

Interestingly, the earlier June 26, 2013 competency report indicated that the only reason that Dr. Pankiewicz would not diagnose Defendant with clinical depression was because he had been taking his antidepressant medications. By October 2, Defendant had stopped taking his medications for a few weeks. Logically, by that date, he was again clinically depressed. The later report indicates that Defendant was exhibiting borderline paranoid thought and gestures of self harm.

On October 4, 2013, the trial court conducted one final pretrial hearing. The trial court discussed Dr. Pankiewicz's competency report. The court read the doctor's analysis about Defendant's ability to represent himself, as discussed in the preceding paragraphs of this Motion. The relevant part of this transcript went as follows:

> THE DEFENDANT: "...I had an issue with Mr. Anderson now. I'm sorry. I don't mean to laugh. It sounds funny to me because it's like on August 13th, he brought me a motion to dismiss a notion or motion to dismiss violation of right to speedy trial and actually that was not something that I intended for it to happen. It should have been for a motion to dismiss all charges.

MR. ANDERSON: Well, that's where you're wrong. This is a perfect example of how he doesn't know what he's doing. I mean I've been over this. He can't even read a legal document properly. So I mean he thinks that I was moving to dismiss his right to have a speedy trial, so he just doesn't get it. And we've never – you know every time I see him, we go over the same ground again and again and it just emphasizes my point that he has no judgment, he has no insight, no ability to represent himself. He just can't do it.

I mean I've talked to Pankiewicz. I mean when we left here I made sure, and I put it on the record, that I thought that I think he's competent, but he's not competent to represent himself. So I wanted Pankiewicz to look at it. Then I called him, went to the Forensic Unit, and then I called him and you know where he talks about exculpatory evidence, it's just – there are certain things that I suggested that I wanted to do for Mr. Brown and, you know, he just blows everything off; motions or things that he could have used, documents that he could get that may be helpful, and he just blows everything off and now he can't even read a motion properly.

...

THE DEFENDANT: ...Back to what I was going to say, he entered a motion for me to dismiss my rights.

MR. ANDERSON: Tell him, Judge, that isn't what happened.

...

MR. ANDERSON: You're just totally wrong.

THE DEFENDANT: If that is the issue, <u>I was on suicide watch.</u> Why did you write it up without my consent? I never asked you for that.

MR. ANDERSON: Well, somebody has to do something before you commit legal suicide. That's my job. I'm not going to let you kill yourself in court. I'm sorry to help you, Mr. Brown.

THE DEFENDANT: Okay. I'm sorry that you sent a letter saying that I impeach my kids.

MR. ANDERSON: Well, that's your job at trial. What are you going to do?

DEFENDANT: Hang on.

MR. ANDERSON: This is a perfect example, Judge, that he can't do it.

...

DEFENDANT: ...I have no further use for Mr. Anderson as co-attorney....

...

MR. ANDERSON: I'm not your co-attorney.

...

THE COURT: Mr. Anderson is standby counsel.

...

MS. LEWIS:...Well, given what Mr. Anderson placed on the record about the fundamental misunderstanding of the motion that he brought on behalf of Mr. Brown, that does, you know, that illuminates the State somewhat more as to Mr. Brown's level of competency to act as his own counsel.

I am inclined to agree with the record that Mr. Anderson is making regarding the fact that there are two issues here; one there's a lack of legal knowledge and an inability to understand the more complex nature of the legal process. That's, obviously, being a lawyer is many steps of being competent to proceed as a defendant in a criminal trial.

THE COURT: Many steps, yes.

MS. LEWIS: And I also think that Mr. Brown's own whatever issues they may be, personality-dynamics wise, I think are preventing him from making decisions that are probably in his best interest. So I can understand the position that Mr. Anderson is in and the record that he's making. I didn't realize that Mr. Brown fundamentally did not understand the last motion and to the extent that he apparently failed to appreciate what it's actually about and what the goal of the motion was and that is highly concerning as to his ability to represent himself.

I mean this is a very serious matter, very serious.

It's going to be a lengthy trial. They're witnesses who have been subject to repeated abuse who are going to have to testify about that abuse at length at trial, and I think we need to and I'm sure the Court, Mr. Anderson, are fully in agreement that we need to take whatever steps necessary to ensure that Mr. Brown gets a fair trial and gets a vigorous and competent, legal defense in this case, because if he does not, I do have the concerns about the issue of whether he has the ability to act as his own attorney coming up as post-conviction or appellate issue here, and that I wouldn't want that to impose a problem and somehow potentially if Mr. Brown is convicted result in the need to have another trial, given the vulnerability of the victims in this case. So that's a real significant concern to the State.

I also agree with the doctor to the extent that he reflects Mr. Anderson's assessment and to a certain extent my own perceptions of what's been going on here as far as Mr. Brown having a really seemingly distorted or unrealistic perspective on what will happen with the case or his likelihood of prevailing as far as the case resulting in acquittal on all counts if he's representing himself.

And I don't think he understands the seriousness of what is happening here, and I don't think he understands realistically what to expect at trial and what the realistic defense approaches are and that kind of thing." (111:6-11).

...

THE COURT: "Again, Mr. Brown, you have not answered my question. Why do you think that testimony (from one of his daughters) would be hearsay?

THE DEFENDANT: I think it would be hearsay because I didn't do it and because it would be her word against mine." (111:16).

...

THE COURT: "Mr. Brown, this is the paperwork you need to fill out that waives or gives up your right to an attorney.

THE DEFENDANT: Well, I just chose not to do that. I just don't want him there. I'm my own attorney. I don't see why I have to waive my rights, sir. There's no reason to

waive any rights.

THE COURT: See now this is where I see Mr. Anderson is coming from." (111:20-21).

_____Once again, the Defendant accused the trial court of violating his constitutional rights, on October 4. (111:23).

_____On October 4, the trial court allowed Defendant to represent himself, but with standby counsel. This, despite all that had occurred that day as well as the prior court hearings. This ruling was after the required legal colloquy. However, the trial court noted that Dr. Pankiewicz had concerns about the Defendant proceeding pro se. Also, the trial court noted that the Defendant was in suicide garb because he was on suicide watch. (111:23-31, 33).

_____On October 4, Dr. Pankiewicz, Scott Anderson, and the State all, essentially, had advised the trial court that Defendant was not competent to proceed pro se. He was on suicide watch on that date. The court itself, as on prior occasions, had indicated concerns about self representation. Nevertheless, the trial court allowed him to represent himself.

Jury trial commenced on October 7, 2013. After multiple issues, such as the Defendant allegedly bullying his children while they were testifying, Judge Borowski removed Defendant's right to represent himself pro se. Eventually, the trial court removed the Defendant from the trial altogether. Scott Anderson represented the

Defendant partially through the trial. Defendant was convicted of multiple Counts in the Information. Judge Borowski eventually sentenced him to approximately one hundred and fifty years of initial confinement. (49:1-8; A 106-113).

On January 15, 2015, Defendant filed his Motion for Postconviction Relief. By this Motion, he had argued that the trial court had clearly erred in allowing him to proceed pro se. He had argued that he was not legally competent to proceed pro se and that he should, therefore, be allowed a new jury trial. Defendant had attached Exhibits to this Motion. (82:1-71).

In response to Defendant's Postconviction Motion, the trial court issued an Order for briefing schedule dated January 16, 2015. (83:1). The State responded on February 19, 2015. (89:1-41). The Defendant submitted a Reply Brief on February 27, 2015. (90:1-10).

On March 4, 2015, the trial court had issued a three page written Decision and Order Denying Defendant's Postconviction Motion. (91:1-3: A 129-131).

Defendant filed his Notice of Appeal in a timely fashion. (92:1-12). This Appeal now follows. Defendant is filing his Appellant's Brief according to the schedule issued by the Court.

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO DISMISS FOR VIOLATION OF SPEEDY TRIAL. THE CONDUCT OF, AND DELAY IN, THE COURT PROCEEDINGS CLEARLY SHOWED THAT DEFENDANT'S RIGHT TO A SPEEDY TRIAL HAD BEEN MATERIALLY VIOLATED, BASED UPON THE RELEVANT AND

APPLICABLE CASE LAW.

A claim of denial of a right to speedy trial raises an issue of constitutional dimensions which the Court of Appeals reviews de novo. The trial court's findings of historical facts are subject to the clearly erroneous standard, but the application of these facts to constitutional standards and principles is determined without deference to the trial court's conclusion. Wisconsin vs. Borhegyi, 222 Wis.2d 506, 588 N.W.2d 89 (Ct.App. 1998).

Defendants have a constitutional right to a speedy trial under both the federal and Wisconsin constitutions. Both jurisdictions rely upon a four part balancing test. These four parts are: (1) the length of the delay; (2) the reason for the delay; (3) Defendant's assertion of his right to a speedy trial; and (4) prejudice to the Defendant. Barker vs. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); Day vs. State, 61 Wis.2d 236, 212 N.W.2d 489 (1973).

Prejudice to the Defendant has identified three interests: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern to the accused; and (3) to limit the possibility that the defense will be impaired. Day vs. State, 61 Wis.2d 236 at 248. No burden is placed upon the Defendant to show he was prejudiced in fact. The assertion of the right to a speedy trial is in itself probative of prejudice. Most interests of a

Defendant are prejudiced as a matter of law whenever the delay, not the result of Defendant's conduct, is excessive. Barker vs. Wingo has expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial. A violation of speedy trial rights results in dismissal of the charges. Hadley vs. State, 66 Wis.2d 350, 225 N.W.2d 461 (1975).

Postaccusation delay presumptively prejudicial at least as it approaches one year. An almost twelve month delay between a preliminary examination and trial was presumptively prejudicial. Wisconsin vs. Borhegyi, 222 Wis.2d 506 at 510. A thirteen month delay between the arrest and the trial of the Defendant violated the Defendant's right to a speedy trial. Extended pretrial detention oppresses the accused and destroys the presumption of innocence. Hadley vs. State, 66 Wis.2d 350 at 368.

Lengthy exposure to pretrial confinement has a destructive effect on human character and makes the rehabilitation of the individual offender much more difficult. Barker vs. Wingo, 407 U.S. 514 at 531.

The responsibility for a more neutral reason for the delay such as negligence must rest with the government. Id. at 531.

An indictment may be dismissed on speedy trial grounds in a situation where the Defendant was represented by incompetent counsel. Id. at 536; State vs. Ziegenhagen, 73 Wis.2d 656, 245

N.W.2d 656 (1976). Under such circumstances, Defendant is exonerated from responsibility. Id. at 663.

On September 16, 2013, the trial court had erred in its decision to deny Defendant's Motion to Dismiss. Defendant had been, both factually and legally, without counsel from the arraignment in September, 2012 until the end of March, 2013. Hicks had been suspended twice during that time, the second time for almost a month. He never advised the court or the State of these suspensions. As discussed, during these periods, he was not allowed to practice law. However, significantly, he factually did not serve as Defendant's attorney during those periods of non-suspension. Instead, neither he or his investigator ever visited with the Defendant. He also never provided Defendant with any discovery during that time. Hence, to attribute this delay to the Defendant is erroneous and contrary to the law.

Plaisted's withdrawal also is not attributed to the Defendant. Plaisted, and not the Defendant, had submitted the Motion to Withdraw. Defendant had indicated that Plaisted could remain as his attorney "...so long as he enters the motions that I requested that are not conflicting with his ethics or anything that would jeopardize his position." (102:4). The trial court then summarily removed the Defendant from the courtroom simply because Defendant had indicated that he did not want his speedy trial rights violated if Plaisted was removed. While Defendant was being removed, the

trial court then summarily, without Defendant's consent, removed Plaisted as counsel. (102:10-11). However, contrary to the trial court, Defendant never requested this withdrawal.

After Plaisted's withdrawal, another month dragged by until Mr. Opland-Dobbs made his first appearance.

Shortly after allowing Opland-Dobbs to withdraw, Defendant, through standby counsel, filed his Motion to Dismiss for Violation of Speedy Trial Right.

Furthermore, contrary to the court, the case was not so complex as to warrant the tolling of the speedy trial. True, there were forty two counts. However, all of these counts involved Defendant's family members who essentially lived together. Multiple counts concerned one continuous act. For example, Counts 23-26 concerned one act that had occurred on Father's day, 2010. Hence, these counts did not involve separate investigations. Also, a number of counts had occurred at the same location. For example, a number of the Counts had occurred at 5011 N. 60th Street. There was no indication of DNA or the need for any defense expert(s). This case was no more complex than four to five armed robberies occurring at various location. These present matters involved credibility issues. Hence, any argument that this case was so complex as to warrant ignoring speedy trial implications is erroneous.

As required under the law, Defendant had made his speedy trial

demands multiple times during the course of the trial proceedings. He refused to agree with Hicks' request to toll the time limits.

Also, there had been a post-accusation delay of approximately fourteen months from the arrest until the filing of the Motion to Dismiss. This satisfies the requirement for prejudicial delay under the above-referenced case law. Defendant had spent this entire time in the Milwaukee County jail under pretrial confinement. He had told the court early on that the jail conditions were oppressive. The case law confirms this statement. His bail of several hundred thousand dollars was too high for him to make. Any indication by the trial court that he could obtain his release by simply paying this bail is unreasonable and not a legal justification.

With respect to the issue of oppressive pretrial detention and Defendant's anxiety and stress, as prejudice, Defendant's Motion to Dismiss expressed the situation accurately:

> "His pretrial incarceration has now become oppressive. The experience with Hicks has led him to quickly go through two subsequent attorneys, his relationship with the second counsel plagued with mistrust and his relationship with the third non-existent because he had lost all faith in defense lawyers. He now represents himself with standby counsel, his courtroom appearances from March 29, 2013 largely filled with anger, vulgarity and outbursts, culminating in an in-court taser incident on the day of Hicks' withdrawal.
>
> His existence in the jail is one of jail segregation; court appearances are made with a stun belt while lashed to a wheelchair. On July 30, 2012, he attempted suicide by turning his ripped t-shirt into a ligature and manually choking himself on the cell floor. A padded suicide gown is now his jail wear. He is

> tearful, distraught and broken; he has given up.
>
> His anxiety and concern are deep and genuine, making the prejudice to him over these delays and the reasons for them extreme." (22:7).

The trial court had erred in denying Defendant's Motion to Dismiss Violation of a Right to a Speedy Trial. This Court should reverse this decision and dismiss the charges with prejudice.

II. THE TRIAL COURT CLEARLY ERRED IN ALLOWING DEFENDANT TO REPRESENT HIMSELF. CONTRARY TO THE COURT, AS WELL AS THE DECISION AND ORDER DENYING POSTCONVICTION MOTION, THE DEFENDANT WAS CLEARLY NOT COMPETENT FOR SELF-REPRESENTATION.

Defendant requests that this Court consider this issue only if it decides against him with respect to his appeal of the trial court's denial of his Motion to Dismiss Violation of Right to Speedy Trial.

On review, the trial court's competency determination will be upheld unless clearly erroneous. State vs. Garfoot, 207 Wis.2d 214, 558 N.W.2d 626 (1997).

When a Defendant seeks to proceed pro se, the circuit court must insure that the Defendant (1) has knowingly, intelligently, and voluntarily waived his right to counsel, and (2) is competent to proceed pro se. If these conditions are not satisfied, the trial court must prevent the Defendant from self-representation because to do otherwise would deny the Defendant the constitutional right to counsel. State vs. Ruszkiewicz, 237 Wis. 2d 441, 613 N.W.2d 893 (Ct.App. 2000); State vs. Marquardt, 286 Wis.2d 204, 705 N.W.2d 878

(2005); State vs. Klessig, 211 Wis.2d 194, 564 N.W.2d 716 (1997).

The level of competence required for self-representation is higher than that of standing trial. State vs. Klessig, 211 Wis.2d 194 at 212; State vs. Pickens, 96 Wis.2d 549, 292 N.W.2d 601 (1980). Any physical or psychological disability which may significantly affect a Defendant's ability to communicate a possible defense to a jury, or the simple inability to present a defense to a jury, is relevant to a competency determination. State vs. Klessig, 211 Wis.2d 194 at 212. Also, the degree that a Defendant is unmanageable or unruly is also relevant to this determination. State vs. Ruszkiewicz, 237 Wis. 2d 441 at 462. The circuit court does not need to identify a specific express finding as to which specific problem or disability prevents a Defendant from being able to meaningfully represent himself. State vs. Marquardt, 286 Wis.2d 204 at 235.

Unruly conduct and behavior is an adequate finding that a Defendant is not competent to proceed pro se. State vs. Haste, 175 Wis.2d 1, 500 N.W.2d 678 (Ct.App. 1993).

In Marquardt, the trial court declined to allow Marquardt to proceed pro se. Among the findings that the Court of Appeals made to support this conclusion were two psychology reports. One report identified psychological problems that interfered with Marquardt's ability to plan a defense strategy. A report indicated that he believed that the legal system was framing him. The Court of

Appeals found that the record supported the trial court's decision. State vs. Marquardt, 286 Wis.2d 204 at 233-235.

The primary interest at trial is for a Defendant to receive a fair trial. This outweighs the Defendant's interests in acting as his own lawyer. Indiana vs. Edwards, 554 U.S. 164, 128 S.Ct. 2379, 171 L.Ed.2d 345 (2008). A Defendant, who, while mentally competent to be tried, is simply incapable of effective communication, or, because of less than average intellectual powers, is unable to attain the minimal understanding necessary present a defense, is not to be allowed "to go to jail under his own banner." Neither the state, nor the Defendant, is in any sense served when a wrongful conviction is easily obtained as a result of an incompetent defendant's attempt to defend himself. State vs. Pickens, 96 Wis.2d 549 at 568.

A decision to deny a Defendant the right to self-representation is valid if the Defendant is not competent to proceed pro se. This, even though the determination is made prior to trial. State vs. Imani, 326 Wis.2d 179, 786 N.W.2d 40 (2010).

Here, the trial court, Judge David Borowski presiding, clearly erred in determining that Defendant was competent to proceed pro se at trial. Defendant had engaged in a long standing pattern of unruly behavior to the court and counsel. He had spit on his first attorney, Michael Hicks, in court. Multiple times he had been highly unruly in court. Both the court and the Sheriff's Department

had made decisions that Defendant should be in the courtroom under high security conditions. Such conditions included numerous bailiffs, spit mask, and restraints. He had cussed at the court and had accused the court loudly of violating his rights. He had argued that there was a conspiracy against him. He had stated that attorney Ann Bowe, and then the court clerk, were Judge Borowski's "baby mothers." He had made comments about the antichrist, had ordered the bailiffs to arrest Judge Borowski, and had indicated that he would have the F.B.I. arrest the judge. He accused the court of changing the statutes and the constitution. Judge Borowski had indicated multiple times that Defendant was acting extremely bizarre with delusional behavior. He had been on suicide watch multiple times during the proceedings. He stated that he had attempted suicide. He was on suicide watch on October 4, the date that Judge Borowski allowed him to proceed pro se.

Furthermore, Mr. Anderson had indicated that Defendant could not understand a simple motion. He aggressively indicated that Defendant was not competent for self-representation due to lack of judgement and insight. The trial court had learned that Defendant did not even understand that he needed to impeach his children, the victims, at trial. Dr. Pankiewicz had indicated that, by the trial date, Defendant had stopped taking his antidepressant medications for a few weeks. Defendant had previously been diagnosed as clinically depressed, and those medications had helped to alleviate

that diagnosis. On October 2, the doctor had indicated that the Defendant suffered paranoid thought with judgement and choices that caused concerns about his ability to act as his own attorney. The report indicated that Defendant had made various suicide gestures while in custody. Furthermore, the State, on October 4, had also indicated that it had concerns about Defendant's competence, his ability to conduct a defense, and ability to represent himself.

True, Judge Borowski did conduct a colloquy with Defendant concerning his ability to represent himself. However, this is not relevant to a finding of competency. State vs. Imani, 326 Wis.2d 179 at 199.

Here, clearly, Defendant had psychological and behavioral issues. He had been diagnosed at one time as being clinically depressed. He had been medicated for that diagnosis. However, he had stopped taking those medications weeks prior to October 4. Based upon the record, to include the comments of the State, the trial court itself, Scott Anderson, and Dr. Pankiewicz, and Defendant's own conduct, the trial court should not have allowed Defendant to proceed pro se. He was clearly not competent to represent himself. This decision was clearly erroneous. A new jury trial is warranted.

The March 4, 2015 Decision and Order had clearly erred in denying Defendant's Postconviction Motion. The Decision discusses both of Dr. Pankiewicz's psychological reports that had found

Defendant competent to stand trial. Interestingly, as previously discussed, Dr. Pankiewicz's second report of October 2, 2013 also discusses Defendant's competence to represent himself. As also previously discussed, Dr. Pankiewicz had clearly indicated that he had serious doubts about this ability. However, the Decision and Order fails to discuss this finding. Clearly, competence to represent oneself is a higher standard than the competence to stand trial. However, this Decision never distinguishes between these two standards. This is materially erroneous and fatal to the Decision's viability to this case.

The Decision and Order also discusses Defendant's disruptive behavior and conduct in court. The Decision indicates that the court felt that this was outrage at the charges in the case and his belief that the allegations were baseless. Unfortunately, this is only slightly partly true. Even the court, during the proceedings, believed that any outrage and conduct went far beyond that of mere outrage at the charges. Defendant had spat at his attorney, had made comments concerning such matters as antichrist and the trial court having attorney Ann Bowe and the court clerk as "his baby's mothers." The court, early in the proceedings, did not believe that Defendant was competent to represent himself. The court found his behavior questionable. The facts section of this Brief provides much further detail and factual analysis of Defendant's conduct and behavior showing his inability to represent himself. Standby

counsel, on October 4, 2013, had informed the court that Defendant did not have the competence to represent himself. Hence, the Decision and Order erroneously indicates that Defendant's behavior did not exhibit a lack of competence to represent himself. The court's own comments throughout the court proceedings materially discredit this conclusion.

Finally, the Decision and Order also indicates that the court conducted a colloquy with the Defendant on October 4, 2013. However, as indicated in the relevant and applicable case law, this is immaterial.

Based upon the foregoing, the trial court clearly erred in denying Defendant's Postconviction Motion. This Court must reverse this Decision and Order.

CONCLUSION

Defendant respectfully requests that this Court grant the relief requested within this Brief.

Respectfully Submitted,

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INDEX TO APPENDIX

CERTIFICATION

I hereby certify that the Appellant's Brief of Defendant-Appellant in the matter of State of Wisconsin vs. Ennis Brown, 2014AP000522 CR conforms to the rules contained in Wis. Stats. 809.19 (8)(b)(c) for a Brief with a monospaced font and that the length of the Brief is fifty (50) pages.

Dated this 17th day of April, 2015, in Waukesha, Wisconsin.

Mark S. Rosen
Attorney for Defendant-
Appellant

CERTIFICATION

I hereby certify that filed with this Brief, either as a separate document or as a part of this Brief, is an appendix that complies with Wis. Stats. 809.19(2)(a) and that contains:

(1) a table of contents;

(2) relevant trial court record entries;

(3) the findings or opinion of the trial court; and

(4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decision showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 17th day of April, 2015, in Waukesha, Wisconsin.

Mark S. Rosen
Attorney for Defendant-
Appellant

CERTIFICATION

I hereby certify that the text of the e-brief of Defendant-Appellant's Appellant's Brief in the matter of State of Wisconsin vs. Ennis Brown, Case No. 2015AP000522 CR is identical to the text of the paper Brief in this same case.

Dated this 17th day of April, 2015, in Waukesha, Wisconsin.

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Attorney for Defendant-
Appellant