STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 1

STATE OF WISCONSIN,

Plaintiff-Respondent,

Appeal No. 2017AP002311 CR
Circuit Case No. 2015CF000575

v.

BRINKLEY L. BRIDGES,

Defendant-Appellant.

APPELLANT'S BRIEF AND APPENDIX

Appeal from the Judgment of Conviction and Sentence entered in
Milwaukee County Circuit Court
Honorable Donald L. Konkol, presiding
And
Appeal from the Order Denying Post-Conviction Motion entered in
Milwaukee County Circuit Court
Honorable David Swanson, presiding

SUBMITTED BY:

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Defendant-Appellant.

COMPLIANCE CERTIFICATE

I hereby certify that this Appellant's Brief and Appendix conforms to the form and length requirements of Rule 809.19(8)(b) and (c) in that it is typewritten using a proportional font. The length of this Appellant's Brief is 5,891 words. I further certify in accordance with Rule 809.19(12)(f) that the text of the electronic copy of this Appellant's Brief and Appendix is identical to the text of the paper copy of this Appellant's Brief and Appendix.

Dated this _____ day of February 2018.

_____
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TABLE OF AUTHORITIES CITED

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Other Jurisdiction Case Law

Wisconsin Statutes and Jury Instructions

STATEMENT OF THE ISSUES

1. Was trial counsel ineffective for not moving the trial court to suppress evidence and Bridges' statement on the basis that the probable cause was insufficient to support a cell phone warrant for GPS tracking?

   Trial Court: No.

2. Did the trial court err by denying Bridges' motion to withdraw his guilty plea without an evidentiary hearing?

   Trial Court: No.

STATEMENT ON ORAL ARGUMENT

Defendant-Appellant, Brinkley Bridges believes because this case questions the level of probable cause that should be required to protect fourth amendment rights before a warrant is issued for the GPS tracking of a cell phone that oral argument is necessary.

STATEMENT REGARDING PUBLICATION

This case involves probable cause and the issuance of a warrant to allow the very invasive GPS technology to track a cell phone and right of privacy as protected by the the fourth amendment. As such, Appellant, Brinkley Bridges submits that the opinion would be instructive to all circuit courts and therefore has statewide implications and that publication is advisable.

STATEMENT OF THE CASE

A Criminal Complaint was filed on February 4, 2015which alleged one count of Possession with Intent to Deliver (Heroin) (>50 grams), Second or Subsequent Offense; one count of Possession with Intent to Deliver (Cocaine)(>15-40 grams), Second or Subsequent Offense; one count of Possession with Intent to Deliver (THC)(>200-1,000 grams), Second or Subsequent Offense; and two counts of Possession of a Firearm by a Felon against Brinkley L. Bridges ("Bridges") pursuant to Wisconsin Statutes §§ 961.41(1m)(d)4, 961.48(1)(a), 961.41(1m)(cm)3, 961.41(1m)(h)2 and 941.29(2)(a). (R. 1)

An initial appearance was held on February 4, 2015. (R. 46). The court found probable cause and set cash bail at $20,000.00. (*Id.* at 3 and 6).

On February 12, 2015 a preliminary hearing was held (R. 47). Bridges waived his right to a preliminary hearing. (*Id.* at 2-4). A Preliminary Hearing Waiver form was also filed with the court. (R. 5). The court ordered the case to be bound over for trial. (R. 47; p. 4). The State filed and Information. (R. 4). Bridges acknowledged receiving the Information and waived it reading and entered a not guilty plea. (R. 47; p. 4).

A scheduling conference was held on February 23, 2015. (R. 48). Bridges was not produced for the hearing and his appearance was waived. (*Id.* at 2). The scheduling hearing was adjourned and the court set a new date. (*Id.* at 3).

On March 19, 2015, the adjourned scheduling conference was held. (R. 49). Bridges was not produced for the hearing and his appearance was waived. (*Id.* at 2). The court set dates for final pretrial hearing and jury trial. (*Id.* at 3).

On May 11, 2015, the final pretrial hearing was scheduled. (R. 50). Bridges was not produced for the hearing and his appearance was waived. (*Id.* at 3). The court was advised the negotiations were continuing to resolve the case and adjourned the pretrial hearing. (*Id.* at 4).

On July 1, 2015 a plea hearing was held. (R. 51). In exchange for Bridge's plea of guilty to the all of the counts in the Information, the State would recommend "a global recommendation of twenty years of initial confinement, followed by twenty years of extended supervision." (*Id.* at 4).

The court then engaged in a lengthy colloquy with Johnson about his no contest plea and waiver of rights. (*Id.* at 6-47). A Plea Questionnaire and Waiver of Rights form was also filed. (R. 8). The trial court then concluded as follows:

> Based upon your pleas of guilty, the Court does find you guilty of the crime of possession with intent to deliver a controlled substance, heroin, more than fifty grams, second or subsequent offense, in Count One, guilty of possession with intent to deliver a controlled substance, cocaine, more than fifteen, but not more than forty grams, second or subsequent offense in Count Two, guilty of possession of a firearm by a felon in Count Three regarding the Glock .40-caliber semi-automatic, guilty of possession intent to deliver a controlled substance, tetrahydrocannabinols, more than 200, but not more than 1,000 grams, second or subsequent, as charged in Count Three – excuse me -- Count Four of the Information, and guilty of possession of a firearm by a felon regarding the Kel-Tec black nine-millimeter semi-automatic firearm with respect to Count Five.

(R. 51; pp. 47-48).

On September 24, 2015 the court set a new sentencing date. (R. 52).

The State and Bridges made a joint request to adjourn sentencing on November 9, 2015. (R. 53). The court granted the request. (*Id.* at 2).

On December 14, 2015 the State and Bridges made another joint request for additional time. (R. 54). The court set a new date for sentencing. (*Id.* at 2).

Another joint request for additional time was made on February 11, 2016 and the court granted the request. (R. 55; p. 2).

The trial court granted more additional time on another joint request on March 23, 2016. (R. 56; p. 2).

Bridges was sentenced on May 5, 2016. (R. 57). The State advised the court that it would be modifying its prior recommendation from 20 years of initial confinement and 20 years of extended supervision to "13 years of initial confinement followed by 20 years of extended supervision for a total sentence of 33 years in the Wisconsin State Prison system." (*Id.* at 4). The court then listened to arguments from the district attorney and defense counsel, and heard a statement from Bridges. (*Id.* at 4-29). The court then sentenced Bridges on Count One to 21 years, 11 years of initial confinement and 10 years of extended supervision; on Count Two to 6 years, 3 years of initial confinement and 3 years of extended supervision, consecutive to Count One; on Count Three to 8 years, 4 years of initial confinement and 4 years of extended supervision, consecutive to Count One and Count Two; on Count Four to 6 years, 3 years of initial confinement and 3 years of extended supervision, concurrent with Count One; and on Count Five to 8 years, 4 years of initial confinement and 4 years of extended supervision, concurrent to Count Three, but consecutive to Count One and Count Two. (*Id.* at 43-44).

On August 18, 2017, Bridges filed a post-conviction motion to withdraw his guilty plea. (R. 29). On November 14, 2017 the trial court

issued an Decision and Order denying Bridge's motion to withdraw his guilty plea. (R. 42).

STATEMENT OF THE FACTS

On January 20, 2015 a warrant was issued to allow GPS tracking of the cell phone, **414-469-6376** on the basis that a CI had informed an investigator that Bridges possessed this cell phone. (R. 37; Attachment A). The information obtained from the GPS tracking identified a residence at 2624 N. 60th Street, Milwaukee, Wisconsin. (R. 32; Exhibit #2, Search Warrant for 2624 N. 60th Street and Exhibit #3, Police Report). The police subsequently obtained a search warrant for this residence. (*Id.*). In the execution of this search warrant, the police seized evidence and arrested Bridges. (R. 1). Shortly thereafter, Bridges gave the police and in-custody statement. (R. 1).

ARGUMENT

A warrant that permitted the GPS tracking of Bridges' cell phone was issued in violation of his fourth amendment rights. As a result, a search warrant was issued and executed resulting in the seizure of evidence, the arrest of Bridges and an in- custody statement by Bridges. Bridges' trial counsel failed to challenge the tracking warrant by filing a motion to suppress evidence and his statement. As a result, Bridges contends that he is entitled to withdraw his guilty plea on the basis that both his fourth and sixth constitutional amendments were violated causing a manifest injustice.

I. BRIDGES' TRIAL COUNSEL WAS INEFFECITVE FOR FAILING TO MOVE THE TRIAL COURT TO SUPPRESS EVIDENCE AND BRIDGES' STATEMENT BY CHALLENGING THE PROBABLE CAUSE FOR THE ISSUANCE OF THE CELL PHONE GPS WARRANT.

Bridges moved the trial court to withdraw his guilty plea based on his trial counsel's failure to move to suppress evidence and his statement. (R. 29). The trial court denied the motion by holding that "there would have been no arguable merit to a challenge to probable cause for the warrant, and therefore, the defendant has failed to establish that counsel was ineffective for failing to file a suppression motion on these grounds." (R. 42). Bridges disagrees. Since this case involves an issue of "constitutional fact", this court

reviews the trial court's decision *de novo*. *See State v. Hajicek,* 2001 WI 3, 240 Wis. 2d 349, 620 N.W.2d 781.

A. THE WARRANT ISSUED TO PLACE THE GPS TRACKING ON BRIDGES CELL PHONE FAILED TO SHOW PROBABLE CAUSE.

The Affidavit for the Phone Warrant failed to state probable cause for three reasons.

A GPS tracking device is considered an intrusive invasion of privacy which requires careful scrutiny before a court can find probable cause to authorize the use of a GPS tracking device. As noted in *Commonwealth v. Augustine,* 4 N.E.3d 846, 467 Mass. 230 (Mass. 2014), GPS tracking on a cell phone "may yield a treasure trove of very detailed and extensive information about the individual's 'comings and going' in both public and private places"; "can function as a substitute for 24/7" surveillance; and "can reveal not just where people go – which doctors, religious services, and stores they visit" in short, "provide an intimate picture of one's daily life." *Id.* at 862-63.

Before a court can find probable cause to permit the GPS tracking of a cell phone, the government is required to make a showing that "there is a nexus between the cell phone, the suspect, and the information sought. *U.S.*

v. Powell, 943 F. Supp2d 759, 778 (E.D. Mich., 2013). The *Powell* court held that to establish probable cause for GPS tracking on a cell phone, there must be a "nexus between a suspect and the phone, the phone and the criminal activity, as well as the criminal activity and suspect's location in protected areas, rather than merely probable cause that a person is engaged in criminal activity. (*Id.* at 779; citations omitted).

More specifically, in a Memorandum Opinion, which Bridges believes can be instructive to this court; the U.S. District Court in the District of Minnesota distinguished the finding of probable cause between two cell phones. (R. 32; Exhibit #4, *U.S. v. Moore,* (D. Minn., 2015)). This court found that the affidavit for the 952 phone failed to show how the 952 phone was used to facilitate narcotics trafficking and therefore no probable cause; however, for the 612 phone, the affidavit explained that the CI had spoken with the defendant on this phone regarding narcotics transactions, and probable cause was established. As such, the mere possession of a cell phone by a suspect is not sufficient to support a finding of probable cause to use GPS tracking,

Paragraph 16 of the Affidavit in support of the request to use GPS tracking on (414) 469-6376 states as follows:

> That your affiant asserts that the confidential informant provided additional detailed information regarding vehicles owned and/or used

> by BRIDGES as well as BRIDGES possession a cellular phone number of **414-469-6376;** that affiant was able to corroborate this information through examining records maintained on other data bases as being truthful and accurate

(R. 32; Exhibit #1, Phone Warrant).

Clearly, the confidential informant only states that Bridges possessed the cell phone (414) 469-6376. Nowhere in the Affidavit is there a statement showing personal knowledge that Bridges used this phone to conduct illegal drug transactions. In addition, the confidential informant was incarcerated and Bridges did not obtain this cell phone until after confidential informant was incarcerated which would have precluded any possibility of the confidential informant from having witnessed Bridges using the cell phone. (R. 31; Affidavit of Brinkley L. Bridges). As shown above, for probable cause to exist, the supporting Affidavit must show a nexus between the cell phone being tracked and Bridges involvement in drug trafficking. Since the Affidavit fails to show this required nexus no probable cause exists. As such the GPS tracking of the cell phone (414) 469-6376 was in violation Bridges' fourth amendment rights and therefore any evidence resulting from the GPS tracking should be suppressed.

The second basis for showing the lack of probable cause is the Affiant's misrepresentation in paragraph 3 of the Affidavit in support of the phone warrant which states as follows:

> That your affiant is conducting a criminal investigation involving the offense(s) of Possession of Heroin With Intent to Deliver, in violation of Wisconsin Statutes §§ 961.41(1m)(d) of the Uniform Controlled Substances Act and listed as a Class C felony; that in the courts of the investigation, it became apparent that the suspect, identified as a **Brinkley L. BRIDGES, b/m, 08-14-68,** and has been using the telephone number of **414-469-6376** to facilitate heroin sales. In the course of that investigation, it became apparent that particular information found in cellular communication records would be useful to investigation. The information useful to investigators was determined to be available from AT&T/New Cingular Wireless, a cellular service provider and communications common carrier as defined in 18 U.S.C. § 2510(10)

(R. 32; Exhibit #1, Phone Warrant).

The Affiant's statement that Bridges has been using the cell phone to facilitate drug transactions has no factual support. As shown above, the confidential informant only stated that Bridges possessed the cell phone, no knowledge of Bridges using the cell phone. The Affiant has made an intentional misrepresentation about the use of the cell phone in order to show a nexus between the cell phone and criminal activity. In *Franks v. Delaware,* 438 U.S. 154, 98 S. Ct. 2674, 57 L.Ed.2d 667 the Supreme Court held that a false statement that was made was necessary for the purpose of showing probable cause, the fruits of the search are to be suppressed. Removing

paragraph 3 from the Affidavit as a false statement, the rest of the Affidavit fails to show the requisite nexus and therefore no probable cause exists.

Finally, in paragraph 11 the confidential informant admits to the trafficking of heroin to establish credibility as a statement against penal interest. (R. 32; Exhibit #1, Phone Warrant). However, there is no independent corroboration of the crime or crimes the confidential informant is admitting he committed. A criminal conviction may not be grounded only on the accused's admissions or confession. *State v. Verhasselt*, 83 Wis.2d 647, 661, 266 N.W.2d 342, 349 (1978). Corroboration is necessary, but all the elements of the crime need not be proved independently of the admission or confession. Some corroboration of any significant fact is sufficient to support a confession. *Triplett v. State*, 65 Wis.2d 365, 372, 222 N.W.2d 689, 693 (1974). Since there is no independent corroboration of the confidential informant's admissions, there can be no statement against his penal interest. As a result, there is no basis to believe that the statements from the confidential informant are credible and reliable.

The affidavit in support of the warrant for the installation of the GPS tracker on the cell phone lacks probable cause because; one, no nexus between use of the cell phone and drug trafficking; two, the affiant's intentional misrepresentation that the cell phone was used in drug

transactions; and three, no showing that the confidential informant is credible and reliable.

As a result, the information and evidence obtained through the GPS tracking of the cell phone was in violation of Bridges' fourth amendment rights and subject to being suppressed.

B. THE EVIDENCE LOCATION OF THE 2624 N. 60TH STREET RESIDENCE WAS OBTAINED THROUGH THE EXECUTION OF THE ILLEGAL PHONE WARRANT AND THE SUBSEQUENT SEARCH WARRANT FOR 2624 N. 60TH STREET WAS BASED ON THIS TAINTED EVIDENCE AND THEREFORE THE EVIDENCE OBTAINED FROM THE SEARCH OF THE RESIDENCE SHOULD HAVE BEEN SUPPRESSED.

In paragraph 17 of the search warrant for the affiant asserts that "through his investigation has identified as 2624 N. 60th Street, Milwaukee, Wisconsin as the location where Brinkley Bridges sleeps." (R. 32; Exhibit #2, Search Warrant for 2624 N. 60th Street). The investigation affiant refers to is the GPS tracking of the cell phone which as shown above violated Bridges' fourth amendment rights. The affiant's police reports clearly show that the location of the 2624 N. 60th Street address was illegally obtained and as a result, the evidence obtained through this search warrant

is the fruit of the poisonous tree and therefore should also be suppressed. (R. 32; Exhibit #3, Police Report).

The exclusionary rule excludes derivative evidence under certain circumstances, via the fruit of the poisonous tree doctrine, if such evidence is obtained "by exploitation of that illegality." *Wong Sun v. United States*, 371 U.S. 471, 485-88 (1963); *State v. Schneidewind*, 47 Wis. 2d 110, 118, 176 N.W.2d 303 (1970). "[I]n its broadest sense, the [fruit of the poisonous tree doctrine] can be regarded ... as a device to prohibit the use of any secondary evidence which is the product of or which owes its discovery to illegal government activity." *State v. Schlise*, 86 Wis. 2d 26, 45, 271 N.W.2d 619 (1978).

In this case, the search warrant for 2624 N. 60th Street was based on the information illegally obtained by the GPS tracking and the search of this residence is was an exploitation of that tainted evidence. As a result, the evidence obtained by this search warrant should be suppressed as a function of the poisonous tree doctrine.

C. BRIDGES WAS ARRESTED DURING THE EXECUTION OF THE ILLEGAL SEARCH WARRANT AND THEREFORE HIS MIRANDIZED STATEMENT WAS NOT ATTENUATED FROM THE ILLEGAL POLICE ACTIVITY AND SHOULD BE SUPPRESSED.

Bridges was arrested at 2624 N. 60th Street during the execution of the search warrant and was immediately taken into custody on January 29, 2015. (R.1). Later that same day Bridges gave a statement to the police. Bridges contends that in accordance with *Wong Sun v. United States,* 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) and *Brown v. Illinois,* 422 U.S. 590, 603–04, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975), his statement must also be suppressed as fruit of the poisonous tree.

A court must look at three factors to determine if the taint from the illegal police activity has been purged to allow the statement to be admissible; (1) the temporal proximity of the arrest and the evidence in question; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official's misconduct. *Brown v. Illinois,* 422 U.S. 590, 603–04, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975); *State v. Artic,* 2010 WI 83, ¶ 5, 327 Wis.2d 392, 786 N.W.2d 430.

Bridges arrest occurred while the illegal search was being conducted and he was immediately transported down to the county jail where he was interviewed. Clearly, the time from the illegal search to the interview

would not be sufficient to attenuate the statement from the illegal police activity. There are no intervening circumstances; case law is clear that giving a suspect their *Miranda* rights does not constitute intervening circumstances. *Brown* at 601-601. The final factor, as shown above, is that the police conduct egregiously violated Bridges' fourth amendment rights; the illegally obtained GPS information and the illegally obtained search warrant. The only remedy would be suppression of Bridges' statement.

In *State v. Tate,* 2014 WI 89, 849 N.W.2d 798 the court found that a search warrant for a trap and trace device was statutorily valid. *Id.* at ¶51. However, in this case Bridges contends that because of the invasiveness of GPS tracking triggers a higher level of probable cause to ensure fourth amendment protection, *Tate* does not apply. In denying Bridges' motion to withdraw his guilty plea, the trial court noted that Bridges relied on case law from other jurisdictions and declined "to adopt their conclusions in this case." (R.42; p. 4). Bridges asserts that neither the case law in Wisconsin nor the Wisconsin statutes adequately provide for the necessary fourth amendment protections that arise from the pervasive invasion from the technical advancements of GPS. Bridges would ask this court to apply the standard put forth in other jurisdictions to establish probable cause for a cell phone GPS warrant to require that a nexus be established between that

particular cell phone and criminal activity; not mere possession of a cell phone. As such, Bridges would request this court to find that probable cause did not exist for the cell phone warrant and to find that a challenge to probable cause by trial counsel would have had merit.

II. THE TRIAL COURT ERRED BY NOT GRANTING AN EVIDENTIARY HEARING ON BRIDGES' MOTION TO WITHDRAW HIS GUILTY PLEA.

The standard of review for determining the necessity for a post-conviction evidentiary hearing was set forth in *State v. Allen*, 2004 WI 106, ¶ 9, 274 Wis. 2d 568, 682 N.W.2d 433, as follows:

> Whether a defendant's postconviction motion alleges sufficient facts to entitle the defendant to a hearing for the relief requested is a mixed standard of review. First, we determine whether the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief. This is a question of law that we review de novo. *State v. Bentley,* 201 Wis. 2d 303, 309-10 [682 N.W.2d 433 (1996)]. If the motion raises such facts, the circuit court must hold an evidentiary hearing. *Id.* at 310; *Nelson v. State,* 54 Wis. 2d 489, 497, 195 N.W.2d 629 (1972). However, if the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing. *Bentley,* 201 Wis. 2d at 310-11; *Nelson,* 54 Wis. 2d at 497-98. We require the circuit court "to form its independent judgment after a review of the record and pleadings and to

> support its decision by written opinion." *Nelson,* 54 Wis. 2d at 498. *See Bentley,* 201 Wis. 2d at 318-19 (quoting the same). We review a circuit court's discretionary decisions under the deferential erroneous exercise of discretion standard. *In re the Commitment of Franklin,* 2004 WI 38, ¶ 6, 270 Wis. 2d 271, 677 N.W.2d 276; *Bentley,* 201 Wis. 2d at 311.

The trial court decided Bridges' motion to withdraw his guilty plea without an evidentiary hearing. (R. 42). Bridges contends that this was in error.

A. BRIDGES' PLEA WAS NOT KNOWINGLY ENTERED AND HE WAS PREJUDICED BY HIS TRIAL COUNSEL'S FAILURE TO FILE A MOTION TO SUPPRESS EVIDENCE AND HIS STATEMENT.

Bridges contends that he is entitled to withdraw his plea for two reasons: one is that the plea was not knowingly entered, and two, he was prejudiced by the deficient performance of his trial counsel. *See State v. Dilliard,* 358 Wis. 2d 543, 859 N.W.2d 44 (2014).

In *Dilliard,* the court held that "[a] plea that was 'not entered knowingly, voluntarily, and intelligently violates fundamental due process, and a defendant therefore may withdraw the plea as a matter of right.'" *Id.* at ¶ 70. In this case, Bridges was not informed as to the consequences the violations of his fourth amendment right. As a result, Bridges was prevented from making a reasoned decision whether to proceed to trial or

accept the State's plea offer. The lack of information undermined Bridges' capacity to knowingly, intelligently, and voluntarily choose between accepting the State's plea offer and proceeding to trial. *See Id.* at ¶ 69. Bridges' guilty plea was not made with full knowledge of the factors pertinent to a decision regarding whether to plead or proceed to trial. (R. 31; Affidavit of Brinkley L. Bridges). Since Bridges did not knowingly, voluntarily and intelligently enter his guilty plea, he is entitled to withdraw his plea.

As shown above, there can be no dispute that the performance of Bridges' trial counsel was deficient by failing to file a motion to suppress. Bridges is also entitled to withdraw his plea by demonstrating that there is a reasonable probability he would not have pled guilty and that he would have gone to trial had he known that the evidence and his statement would be suppressed as a result of the violations of his fourth amendment rights. *Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) "does not require certainty or even a preponderance of the evidence that the outcome would have been different with effective assistance of counsel"; it requires only "reasonable probability." *Id. at* 466 U.S. at 694. No motion to suppress was ever filed in this case which clearly shows that there was a reasonable probability that Bridges would not have entered a

guilty had he known that the evidence and statement would be suppressed and his case may even have been dismissed. As such, Bridges is entitled to withdraw his guilty plea as a result of receiving ineffective assistance of counsel.

B. THE PREJUDICE RESULTING FROM BRIDGES' TRIAL COUNSEL'S FAILURE TO FILE A MOTION TO SUPPRESS EVIDENCE AND HIS STATEMENT IS A MANIFEST INJUSTICE THAT WOULD ENTITLE BRIDGES TO WITHDRAW HIS GUILTY PLEA.

Upon a showing of "manifest injustice" Bridges is entitled to withdraw his guilty plea. The "manifest injustice" test is met when a defendant was denied the effective assistance of counsel. *State v. Bentley,* 201 Wis. 2d 303, 311, 548 N.W.2d 50 (1996).

As shown above, trial counsel was ineffective by failing to challenge the cell phone warrant authorizing GPS tracking; failed to challenge the search warrant based on the illegally obtained information from the cell phone warrant and failed to suppress Bridges' statement after his was apprehended during the execution of the search warrant. Bridges was prejudiced by his trial counsel's deficient performance. (R. 31; Affidavit of Brinkley L. Bridges).

Bridges contends that a manifest injustice exists that entitles him to have his guilty plea withdrawn. As such, Bridges would request that this court remand this case back to the trial court for an evidentiary hearing on his motion to withdraw his guilty plea.

CONCLUSION

For all of the reasons stated above, Brinkley Bridges requests this court find that his fourth amendment rights were violated by the lack of probable cause for the issuance of the cell phone GPS warrant and that the trial court erred by not holding an evidentiary hearing on his motion to withdraw his guilty plea in violation of his sixth amendment right to have effective assistance of counsel. Brinkley Bridges further requests that his case be remanded back to the circuit court for evidentiary hearing on his motion to withdraw his guilty plea.

Respectfully submitted,

_____

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Defendant-Appellant.

APPENDIX CERTIFICATE

I hereby certify that with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 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 decisions 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 _____ day of February 2018.

_____
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APPELLANT'S APPENDIX