RECEIVED
05-24-2018
CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Case Nos. 2018AP55-CR,
2018AP 56-CR & 2018AP57-CR

MARIES D. ADDISON,

Defendant-Appellant.

ON NOTICES OF APPEAL FROM JUDGMENTS OF CONVICTION AND AN ORDER DENYING POST CONVICTION MOTION ORDERED AND ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, BRANCHES 6 AND 28, CIRCUIT JUDGES ELLEN R. BROSTROM AND MARK A. SANDERS PRESIDING

DEFENDANT-APPELLANT'S BRIEF AND APPENDIX

KACHINSKY LAW OFFICES
By: Len Kachinsky
State Bar No. 01018347
832 Neff Court
Neenah, WI 54956-2031
Phone: (920) 841-6706
Fax: (775) 845-7965
E-Mail: LKachinsky@core.com

Attorneys for the
Defendant-Appellant

TABLE OF CONTENTS

CASES CITED

WISCONSIN STATUTES CITED

OTHER AUTHORITIES CITED

STATE OF WISCONSIN

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

DISTRICT I

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Case Nos. 2018AP55-CR,
2018AP 56-CR & 2018AP57-CR

MARIES D. ADDISON,

Defendant-Appellant.

ON NOTICES OF APPEAL FROM JUDGMENTS OF CONVICTION AND AN ORDER DENYING POST CONVICTION MOTION ORDERED AND ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, BRANCHES 6 AND 28, CIRCUIT JUDGES ELLEN R. BROSTROM AND MARK A. SANDERS PRESIDING

DEFENDANT-APPELLANT'S BRIEF

ISSUES PRESENTED

I. DID THE TRIAL COURT ERR IN NOT DISMISSING THESE CASES BECAUSE OF A VIOLATION OF ADDISON'S RIGHT TO A SPEEDY TRIAL?

The trial court answered this question in the negative.

II. DID THE TRIAL COURT ERR BY DENYING ADDISON'S REQUEST FOR NEW COUNSEL AND FORCING HIM TO PROCEED *PRO SE* WITHOUT A SUFFICIENT FINDING THAT ADDISON COULD REPRESENT HIMSELF?

The trial court answered this question in the negative.

III. DID THE TRIAL COURT ERRONEOUSLY DEPRIVE ADDISON OF HIS RIGHT TO RELIGIOUS FREEDOM DURING TRIAL BY BANNING ADDISON'S BIBLE FROM THE COURTROOM?

The trial court answered this question in the negative.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not requested as the defendant-appellant (Addison) believes the briefs of the parties will fully meet and discuss the issues on appeal. Publication is not appropriate as this case involves unique facts involving the application of settled case law.

STATEMENT OF THE CASE

By order of this court on January 12, 2018, these cases were consolidated for briefing and disposition. References to the record will be made by a letter in front of each reference to the paginated record. Thus, references to the record in Case No. 11 CF 1079 (2018 AP 55) will be preceded by the letter A. References to the record in Case No. 11 CF 1664 (2018 AP 56) will be preceded by the letter B. References to the record in Case No. 11 CF 2881 (201818 AP 57) will be preceded by the letter C.

Set forth below is a chart with offenses with which Addison was charged and the results of the jury's verdict and the sentencing by Judge Ellen Brostrom. WSP is an abbreviation for initial confinement in the Wisconsin State Prisons. ES stands for extended supervision. Further details of the procedural posture of the case will be discussed in the argument below on the speedy trial issue.

Count	**Case No**	**Offense**	**Verdict**	• **Sentence**
1	11 CF 1079	False imprisonment of K. L.	G	3 yrs WSP, 624 days credit, 2 years ES
2	11 CF 1079	2nd degree sexual assault of K.L.	G	25 yrs WSP; 8 yrs ES
3	11 CF 1079	Kidnapping of K.L.	NG	
4	11 CF 1079	2nd degree sexual assault of K.L.	G	25 yrs WSP; 8 yrs ES
5	11 CF 1079	1st degree sexual assault aiding & abetting of K.L. (force)	G	40 yrs WSP;10 yrs ES
6	11 CF 1079	1st degree sexual assault aiding & abetting of K.L. (force)	G	40 yrs WSP;10 yrs ES
7	11 CF 1079	2nd degree sexual assault aiding & abetting of K.L. (force)	G	25 yrs WSP; 8 yrs ES
8	11 CF 1079	1st degree sexual assault aiding & abetting of K.L.(force)	NG	
9	11 CF 1079	Strangulation of K.L.	G	15 yrs WSP; 8 yrs ES
1	11 CF 1664	Child enticement prostitution- D.B.	G	15 years WSP, 5 yr ES
2	11 CF 1664	Trafficking a child-- D.B.	G	25 years WSP, 8 yrs ES

3	11 CF 1664	2nd degree sexual assault-force- D.B.	G	25 years WSP, 8 yrs ES
4	11 CF 1664	Child enticement expose sex organ- D.B.	G	15 years WSP, 5 yrs ES
5	11 CF 1664	Strangulation and suffocation-- D.B.	G	3 years WSP, 2 years ES
6	11 CF 1664	Child exploitation employ, use, induce- D.B.	G	25 years WSP, 8 yrs ES
7	11 CF 1664	2nd degree sexual assault force or violence- D.B.	NG	
8	11 CF 1664	2nd degree sexual assault force or violence- D.B.	G	25 years WSP, 8 yrs ES
9	11 CF 1664	Child exploitation employ, use induce- D.B.	G	25 years WSP, 8 yrs ES
11	11 CF 1664	Human Trafficking- D.B.	NG	
1	11 CF 2881	Human Trafficking- J.C.	G	15 years WSP, 5 yrs ES
2	11 CF 2881	Second degree sexual assault-force	NG	
3	11 CF 2881	Human Trafficking- J.P.	G	15 years WSP, 5 yrs ES

- All sentences in each case were concurrent to each other but consecutive to those imposed in the other two cases.

After sentencing on November 16, 2014 (A171) , and entry of the Judgments of Conviction (A75, B69 & C64; App. 101-111) , Addison filed a notice of intent to pursue post-conviction relief (A75, B70, C65). On October 16, 2017, Addison filed a motion for post conviction relief (A121; App. 126-146). On January 2, 2018, after additional briefing (A126 and A127), Judge Mark Sanders entered a written decision and order denying the post conviction motion (A128; App. 112-125). On January 4, 2018, Addison filed Notices of Appeal (A

132, B128 & C122) directed at each Judgment of Conviction and the Order Denying Post-Conviction Motion.

STATEMENT OF FACTS

The statement of facts regarding the underlying offenses will be in summary form. Addison has prepared a chart with a time line as to the speedy trial and right to counsel issues which is attached as Exhibit A to the post-conviction motion in the appendix (A121: 18-12; App. 143-146).

Detective Linda Stott testified regarding the general methodology of those involved in the sex industry (A151: 50-103, A152: 15-71). K. L. testified that she met Addison when he was a customer at McDonald's (A152: 44-50). Later she accepted an invitation from Addison to go to church and have dinner at Addison's mother's home and stayed overnight (A152: 51-59). The next morning, Addison explained how he was a pimp (A152: 59-66). D. B. (a/k/a China) also explained things to K.L. (A152: 66-68). Addison told K.L. he was not letting K.L leave and that she would stay with him (A152: 68-80). K.L described how she was to attract customers and dance in the Cheetah Club (A152: 81-93). Addison punched K.L in the face, grabbed her hair and choked her (A152: 97-102). Then Addison threw K.L on the ground and put his penis in her vagina (A152: 103-104, A153: 6-8). Then they went to Addison's residence where D.B. was and Addison had sex with both of them (A153: 15). Then Addison and D.B. put a dildo into K.L (A153: 15-18). Then Addison had K.L and D.B. perform sex acts with each other (A153:

18-30). K.L showed her injuries to her mother and had pictures taken (A153: 31-44).

J..L, K.L's mother, testified that she could not reach her daughter when she was with Addison (A155: 60-66), J..L observed her daughter's injuries and spoke to her when she returned home after about three weeks (A155: 68-78, 84, 91-101). J..L called the police (A155: 78-80).

P. S. testified that she met Addison while walking to work in downtown Milwaukee (A156: 42-52). P.S. met other girls in a motel that worked with Addison (A156: 53-60). P.S. went to some strip clubs with Addison (A156: 62-64). P.S. visited Addison in the jail where he asked her to get statements from businesses and stay in touch with M. and D.B. (A156: 79-88).

D.B. testified that Addison gave her the name of "China" (A157: 85). D.B. described the prostitution activities she was involved in with Addison (A157: 86-112). If D.B. did not follow instructions, Addison would strike her or impose other physical discipline (A157: 112-115, 122-124, 152-153, 159-161, A158: 69: 71). D.B. informed K.L of some of Addison's rules and procedures (A157: 128-129, 130-145). D.B. described an incident of sex with K.L and Addison in a bedroom (A157: 149-151, A158: 28-40). Addison also hit D.B. at Motel Six and had sex with her against her will (A158: 43-46). Addison arranged for the girls to have sex with customer at several motels (A158: 51-55, 62-68). Addison was also violent to J.G. (A158: 75-79). D.B. also worked with J.C. (A158: 79-83). D.B.

recognized others that worked with Addison from recordings and identified text messages (A158: 173-218, 222-226).

When she was recalled as a witness, D.B. testified that lied before about not talking with Addison on the phone while Addison was in the jail (A164: 71-76).

J.G. testified that after meeting Addison she met the other girls (A161: 39-43). J.G. learned to dance and do other things (A158: 43-60). Addison imposed physical discipline (A161: 61-66).

J. C. testified that after Addison recruited her he told her what do to for his business and she was somewhat afraid of him (A161: 110-116). Addison had sex with her against her will (A161: 116-120, 150). J.C. had sex with J.P. and M. while Addison was recording (A161: 159).

Eve Meyer, a registered nurse, testified that she examined K.L on November 8, 2010 (A163: 50-56). K.L described the strangulation and physical and sexual assaults and was in pain from her injuries (A163: 57-84).

J.P. testified that Addison recruited her and the first assignment was at a motel across from the Silk Club (A163: 95-103). J.C. and M. joined them (A163: 104). M, was on the computer and J.P. answered the phones (A163: 105-113). J.P. had sex with a customer (A163: 114-120). She felt intimidated by Addison from his time at Wong's Wok and his personality (A163: 120-122, 128). J.P. also saw Addison kick M. (A163: 122-126) and beat J.C. (A163: 127-128). J.P. also had dates at other motels in Milwaukee (A163: 130-133). J.P. performed oral sex

with J.C. and M. and with Addison against her will (A163: 147-148, 209-210, 213).

For several reasons, primarily cumulativeness, the court ruled that Sheila McDaniel, Christina Addison and Steven Lavaaughn[1] were not to be called as witnesses to testify as to the lack of visible bruises upon K.L (A163: 225-229). Teresa Jackson would have testified solely to lack of complaints by K.L to sexual assault (A163: 229-230). There were females that Addison did not traffic whom Addison wanted to call as witnesses (A163: 230-233). Angela Pace was a prostitute whose testimony was collateral to this case and the court agreed to strike references to her by J.G. (A163: 233-238). Mrs. Cowan was hearsay (A163: 238-239). Jeanine D.B., who would testify that D.B. was prostituting herself, was cumulative and not allowed as a witness (A163: 239-241). Shaquieka Mallet's testimony that she owned or bought Addison's cars was irrelevant and not allowed (A163: 242-243). C. S. would know the number of days they were together (five rather than two) but Judge Brostrom found it irrelevant and did not permit the testimony (A163: 247-249).

K.P. testified that that she helped locate J.P. when J.P. failed to come home for a couple days (A163: 261-279).

Steven Levaughn testified that during October or November 2010 he saw K.L with Addison but she did not appear injured or in distress (A163: 196-200).

[1]Levaughn was called as a witness anyway.

Addison testified on his own behalf that he began his business while he was on parole (A163: 232-243). Addison got reinvolved with J.G. who was the mother of his son (A163: 244-245). Addison also described meeting D.B. but denied being sexually involved with her (A163: 250-260). Addison described how he went to Iowa with some of the girls and had sex with D.B. as she was of age there (A163: 267-274). Addison had voluntary sexual intercourse with K.L in his Cadillac and at the residence (A163: 275, A163: 20-21). Addison did not force K.L to dance and K.L became enthusiastic about dancing (A163: 278-279; A166: 13-18). D.B. was at the residence when Addison had sex with K.L and acted jealous (A163: 21-25). Addison also recruited a white girl named Cream (A163: 26-29, 31-32). D.B. left the Addison residence (A163: 30-31). At the end of November, K. and J.B. returned and were allowed to keep the money they made but gave it to Addison to be his girlfriend (A163: 32-34). There were disputes over money with Addison's girls (A163: 35-40). Addison recruited J.C. and introduced her to the other girls (A163: 41-45). Addison told Vegas to end her crack habit (A163: 47-53). Addison started making payments on the Cadillac Escalade so the girls could leave him (A163: 53-54). D.B. talked about suicide and moved to Chicago for a while (A163: 55-64). Then D.B. returned to Addison's business (A163: 64-69). D.B. , M. and J.P. did a threesome which Addison recorded (A163: 69-73). Addison had sex with J.P. and she got her own room (A163: 77). Then J.P. started doing tricks and the extra money helped get her better clothes and hair (A163: 78-

79). Addison did not forced J.P. or anyone to participate in his business (A163: 84-85).

Officer Alex Mantay testified that on November 4, 2010 he met with K.L. (A163: 97). He observed redness in the eyes but no injuries (A163: 101-102).

Further facts will be stated in the argument below.

ARGUMENT.

I. THIS CASE SHOULD BE DISMISSED BECAUSE ADDISON'S RIGHT TO A SPEEDY TRIAL WAS VIOLATED.

A. *Standard of Review and Applicable Law*

The right to a speedy trial is guaranteed under the Sixth Amendment to the United States Constitution and under article I, section 7, of the Wisconsin Constitution. Under the state and federal constitutions "`the right to a speedy trial arises with the initial step of the criminal prosecution, *i.e.*, the complaint and warrant.'" *State v. Ziegenhagen***,** 73 Wis. 2d 656, 664, 245 N.W.2d 656 (1976) [quoting *State ex rel. Fredenberg v. Bryne***,** 20 Wis. 2d 504, 508, 123 N.W.2d 305 (1963)]. The speedy trial inquiry is triggered by an arrest, an indictment, or other official accusation. *Doggett v. United States***,** 505 U.S. 647, 655, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992); *see State v. Lemay***,** 155 Wis. 2d 202, 209, 455 N.W.2d 233 (1990) (speedy trial provision applies once a defendant "in some way formally

becomes the accused"). Here, Addison's detention on March 8, 2011 triggered his right to a speedy trial.

The remedy for the denial of a speedy trial is a dismissal of the conviction with prejudice. *Strunk v. United States***,** 412 U.S. 434, 439-40, 93 S.Ct. 2260, 37 L.Ed.2d 56 (1973) .

In determining whether a defendant's right to a speedy trial has been violated, the courts must employ the balancing test set forth in *Barker v. Wingo***,** 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) and adopted in Wisconsin by *Day v. State***,** 61 Wis. 2d 236, 244, 212 N.W.2d 489 (1973). *Barker* directs a reviewing court to balance the following four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. *Id.***,** 407 U.S. at 530.

Under the first factor, the length of the delay, the court must determine whether the delay was "presumptively prejudicial." *Id.* at 530. If the delay is presumptively prejudicial, the court must then address the three remaining factors; however, if not, the inquiry ends and there is no violation of the right to a speedy trial. *Id.*; *State v. Borhegyi***,** 222 Wis. 2d 506, 510, 588 N.W.2d (Wis.App. 1998) (referring to the first factor as a "triggering mechanism").

The United States Supreme Court has stated that, "[d]epending on the nature of the charges, the lower courts have generally found post accusation delay `presumptively prejudicial' at least as it approaches one year." *Doggett***,** 505 U.S.

at 652 n.1. Wisconsin's Supreme Court came to the same conclusion, holding that an almost twelve-month delay between a preliminary examination and trial was presumptively prejudicial. *Green v. State,* 75 Wis. 2d 631, 636, 250 N.W.2d 305 (1977).

B.. Addison was deprived of his right to a speedy trial.

Addison was confined after being unable to post bail on March 8, 2011 (A135). Addison demanded a speedy trial on March 15, 2011 (A136). His trial began on August 13, 2012 (A148: 47) and resulted in a verdict on August 28, 2012 (A67; A170). Addison was sentenced on November 16, 2012 (A171). Per timeanddate.com, confinement time prior to the commencement of trial was 539 days or 1 year, 5 months, 20 days. Clearly, the substantial delay qualifies as presumptively prejudicial.

The second element is the reason advanced for the delay. Only delays attributable to the State may be considered when deciding whether the defendant has been denied a speedy trial. *Norwood v. State,* 74 Wis. 2d 343, 354, 246 N.W.2d 801 (1976). On November 14, 2011, Attorney DePeters asked for a delay due to her foot injury, the need to investigate and lack of an offer (A143). Addison did not personally consent to the request. The trial in this matter did not occur on February 21, 2012 as scheduled for reasons unclear in the record. On May 14, 2012 (A145) and June 18, 2012(A146), there were more problems with

the State in providing electronic discovery. These delays clearly can be attributed to the State.

The trial court's opinion was that the State was responsible for only 4 months of the delay in the trial (A128:7; App. 118). Addison disagrees. The State initially delayed proceedings for its convenience as it decided to bring additional charges against Addison and join them with older cases (A128:4; App. 115). The other delays were related to that and the State's lack of organization regarding electronic discovery which Addison needed to be prepared for trial (A128: 5-6; App. 116-117). The lack of organization by the State in identifying and providing electronic discovery to Attorney DePeters should be held against the State even though it may not have been an intentional effort to delay proceedings.

The State claimed in proceedings below (126: 3) that the delays were only due to the "ordinary demands of the judicial system" citing *State v. Williams*, 2004 WI App 56, 270 Wis.2d 761, 677 N.W.2d 691. Addison submits that delays due to the State's failure in learning to cope with the growth in electronic evidence in criminal cases must be attributed to the State which has vast resources to analyze such evidence not available to defendants such as Addison.

The third consideration is whether Addison asserted his right to a speedy trial. ***Barker,*** 407 U.S. at 531. As noted above, he asserted it on March 15, 2011 (A136: 47). The record does not indicate that either Addison or his attorneys ever

withdrew the demand. Addison did not personally consent to DePeters' request for additional time on November 13, 2011 or later.

> Whether and how a defendant asserts his right is closely related to the other factors previously mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right.

Id. at 531-32.

Finally, the last factor is whether the delay resulted in prejudice to Addison. This factor is assessed in "light of the interests of defendants which the speedy trial right was designed to protect." *Barker*, 407 U.S. at 532. *Barker* identified three such interests: (1) "to prevent oppressive pretrial incarceration"; (2) "to minimize the anxiety and concern of the accused"; and (3) "to limit the possibility that the defense will be impaired." *Id. see Hatcher v. State*, 83 Wis. 2d 559, 569, 266 N.W.2d 320 (1978). According to jail medical records, while Addison was incarcerated in the Milwaukee County Jail, he suffered from back pain, tinea pedis, possible ulcers , situational depression and athletes foot. Addison was observed by correctional health staff frequently making references to God in an unusual manner. The trial court did not address this offer of proof.

Under the totality of the circumstances, Addison was prejudiced by delays in the trial for over 15 months that were not of his making. The State's lack of organization in getting the electronic discovery to Attorney DePeters and Addison prejudiced Addison's ability to be properly prepared for trial and probably contributed to his distrust of Attorney DePeters whom he discharged several weeks before trial. Addison's speedy trial rights were violated. These cases should be dismissed.

II. JUDGE DALLET ERRONEOUSLY EXERCISED HER DISCRETION IN DENYING ADDISON'S REQUEST FOR NEW COUNSEL AND FORCING HIM TO PROCEED *PRO SE* WITHOUT A SUFFICIENT FINDING THAT ADDISON COULD REPRESENT HIMSELF.

A. Standard of Review

"Decisions related to the substitution of counsel are within the sound discretion of the [trial] court." *State v. McMorris***,** 2007 WI App 231, ¶18, 306 Wis. 2d 79, 742 N.W.2d 322. "[T]he exercise of discretion is not the equivalent of unfettered decision-making." *Hartung v. Hartung***,** 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). To be upheld, a discretionary act "must demonstrably be made and based upon facts appearing in the record and in reliance on the appropriate and applicable law." ***Id.***

In *State v. Lomax***,** 146 Wis. 2d 356, 432 N.W.2d 89 (1988), the Wisconsin Supreme Court stated the factors to be applied to a motion to change counsel that was made on the day of trial. It stated:

> In evaluating whether a trial court's denial of a motion for substitution of counsel is an [erroneous exercise] of discretion, a reviewing court must consider a number of factors including: (1) the adequacy of the court's inquiry into the defendant's complaint; (2) the timeliness of the motion; and (3) whether the alleged conflict between the defendant and the attorney was so great that it likely resulted in a total lack of communication[3] that prevented an adequate defense and frustrated a fair presentation of the case.

*Id.***,** 146 Wis. 2d 356, 359, 432 N.W.2d 89 (1988). The discretionary determination "`must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.'" *Id.* (citation omitted). In *State v. Jones*, 2007 WI App 248, 306 Wis. 2d 340, 742 N.W.2d 341, the Court of Appeals considered the denial of a request to change counsel in October when the trial was set for February of the following year. *Id.***,** ¶¶8-10. Relying on *Lomax***,** it affirmed that an "indigent defendant *is* entitled to a lawyer with whom he or she can communicate." *Jones*, 306 Wis. 2d 340, ¶13 (emphasis in *Jones*).

B. The Trial Court Forced Addison to Represent Himself or Be Represented by an Attorney with Whom Commuinication Had Broken Down.

In this case, Attorney DePeters had represented Addison since May 2011. At the hearing on July 24, 2012 (A147), Judge Dallet noted that the trial was scheduled for August 13, 2012 and had been adjourned 4 times (A147: 3). Addison complained that DePeters had not pursued leads in the case and got snappy a lot (A147: 3). She had not pursued missing evidence (A147: 3). DePeters stated that she attempted to review Back Page ads with Addison and he yelled at her (A147: 5). Addison also filed a complaint with OLR (A147: 5) . DePeters did not want to audition her cross examination for Addison (A147: 5). DePeters asked Addison to write her a letter about things but he had not (A147: 6). Addison was uncooperative (A147: 6). DePeters denied being snappy and Addison denied being noncooperative (A147: 7-8). It is clear there was a breakdown of communications.

ADA Miriam Falk described her preparations for trial (A147: 9-10). Witnesses were difficult to keep track of and wanted to move out of town (A147: 10). Judge Dallet described the previous adjournments based upon late disclosure of evidence and need for investigation (A147: 11). The witness problem was "huge." (A147: 12). Dallet did not see a conflict other than that created by Addison (A147: 13).

After Dallet stated that "we're gonna have a trial on August 13th," Addison stated that "I'll represent myself then" (A147: 13). In response to a question from Judge Dallet about whether he "had given this any thought", Addison responded

that, "If she represents me I'm gonna be convicted. I'm not gonna be convicted." Dallet then went through a colloquy with Addison regarding Addison's understanding of the charges and penalties, his age and education, his understanding of the court proceedings[2] and rules of evidence[3]. In response to a question regarding whether Addison understood a lawyer knew more about defenses and strategies than he did, Addison stated that. "I need a lawyer that cares about me and I know that can win the case (A147: 21). In response to the court's question about knowing that if Addison did not have an attorney that no one else would protect his rights, Addison replied, ""I have somebody here to protect me and you better know his name is Jesus Christ…You just can't see him. I need an attorney who cares (A147: 22). When prompted by Judge Dallet, Addison agreed with the court he wanted to give up his right to an attorney and exercised his right to represent himself (A147: 22). Addison then renewed his criticism of Attorney DePeters for depicting him as a monster and getting "real snappy" (A147: 23). Attorney DePeters stated that her investigator had interviewed witnesses and pursued every lead Addison had given her (A147: 24). Addison stated that he had just made up his mind then to give up his right to an attorney then because he felt he had no choice (A147: 25). Addison's choice was "to give up his right to Miss DePeters as my attorney." (A147: 26).

[2] Addison's said he did "somewhat." (A147: 20).
[3] Addison stated he did not understand them but "I can learn." (A147: 21).

Judge Dallet found that Addison had the ability to represent himself and understood the disadvantages of self-representation (A147: 26).

What Judge Dallet did not consider was that Addison had not previously discharged counsel. His request to represent himself was clearly based upon Judge Dallet's initial refusal to let Attorney DePeters withdraw and refusal to allow new counsel to be appointed by the State Public Defender (SPD) (A147: 25). While Addison had technical school training beyond high school (A147: 19), he also was inexperienced and uneducated in legal matters (A147: 20-21, 34-36). He made delusional statements about Jesus serving as Addison's attorney (A147: 22). The court made no inquiry into Addison's repeated references to Jesus Christ (A147: 22). Allowing appointment of a new attorney would result in the scheduled trial three weeks from the hearing being delayed. But there was time for the State to notify witnesses of the delay and for the court to schedule new matters to fill up the time slot.

Judge Dallet's finding that Addison had the ability to represent himself and made his choice freely and voluntarily (A147: 26) was not supported by the evidence in the record. Addison's request to represent himself was an impulsive reaction to the court's denial of Addison's request for new counsel. To prove such a valid waiver of counsel, the circuit court must conduct a colloquy designed to ensure that the defendant: (1) made a deliberate choice to proceed without counsel, (2) was aware of the difficulties and disadvantages of self-representation, (3) was

aware of the seriousness of the charge or charges against him, and (4) was aware of the general range of penalties that could have been imposed on him. (citations omitted) *State v. Klessig,* 211 Wis.2d 194, 206 564 N.W.2d 716 (Wis., 1997). While the court went through a colloquy with Addison, the colloquy and subsequent findings did not address Addison's lack of court experience and delusional statement about Jesus.

During the trial itself, Addison continued to demonstrate his delusions about divine intervention. Addison told the court that the "blood of Jesus" was against it and Jesus was on his side (A158: 100, 117, A161: 25, 104, 117). He felt at a disadvantage without an attorney at his side (A158: 117-120). He also told the court that the Devil was alive and that the blood of Jesus was warm (A163: 212).

In Wisconsin, there is a higher standard for determining whether a defendant is competent to represent oneself than for determining whether a defendant is competent to stand trial. *State v. Klessig,* 211 Wis.2d at 212. The court must consider "the defendant's education, literacy, fluency in English, and any physical or psychological disability which may significantly affect his ability to communicate a possible defense to the jury." *State v. Klessig,* 211 Wis.2d at 212. Addison's delusional comments about divine assistance and his attitude displayed at the July 24, 2012 hearing suggested a psychological disability. But the record does not show the court ever assessed that in a meaningful way. This was an extremely voluminous case that ended up taking over two weeks to try

even though only one week had been set aside. There were vast quantities of discovery and complex legal issues. Few attorneys would be competent to represent a client in such a case much less a 28 year old lay person with minimal court experience. During the trial, Addison demonstrated that he had great difficulty even with the assistance of Attorney DePeters as standby counsel. The inquiries made by the court were insufficient. The court should order a hearing as mandated by *Klessig* to determine Addison's competency to represent himself during the August 2012 trial. A psychological examination may be warranted. If Addison is found not to have been competent to represent himself then, a new trial must be held.

The facts of this case are very similar to *State v. Jackson*, 2015 WI App 45, 363 Wis.2d 484, 867 N.W.2d 814. In *Jackson*, the defendant had complaints about his trial attorney (Wright) similar to those Addison had against DePeters. The trial court ultimately found that Jackson, who suffered from schizophrenia, was not competent to represent himself and could not knowingly, intelligently and voluntarily waive his right to counsel. *Jackson*, ¶22. The Court of Appeals affirmed the trial court's findings that Jackson's dissatisfaction with counsel was not the product of a desire to represent himself. *Jackson*, ¶26. The same should be said here given Addison's statements at the hearing in which he was ordered to represent himself. Addison was suffering from prolonged pretrial incarceration and made illogical statements about religion with little bearing on the practical

demands of representing himself at trial. The court put Addison in a corner when it refused to seriously consider his first request for new counsel. Simply because Addison chose what he perceived to be the second worst alternative to being represented by DePeters did not mean it was a voluntary choice that met the requirements of *Klessig*.

In his ruling on the post-conviction motion, Judge Sanders held that Addison's unequivocal refusal to proceed with Attorney DePeters gave Judge Dallet no choice but to question Addison about his desire to proceed *pro se* (A128: 14; App. 124). But the extensive colloquy of Judge Dallet with Addison (A128: 10-14, App. 121-124) established only Addison's conflict with DePeters, not that Addison rejected representation by counsel. It was also tainted by the court's prior refusal to adjourn the trial so that new counsel could be appointed and represent Addison.

III. THE COURT ERRONEOUSLY DEPRIVED ADDISON OF HIS RIGHT TO RELIGIOUS FREEDOM DURING TRIAL BY SEIZING ADDISON'S BIBLE.

A. Standard of Review and Applicable Law

Sec. 906. 11(a), Wis. Stats., provides that

> The judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to do all of the following:
> (a) Make the interrogation and presentation effective for the ascertainment of the truth.
> (b) Avoid needless consumption of time.
> (c) Protect witnesses from harassment or undue embarrassment.

Litigants have the right to have cases decided based on the evidence adduced at trial, not on some other basis. See *Holbrook v. Flynn,* 475 U.S. 560, 570, 106 S.Ct. 1340, 89 L.Ed.2d 525 (1986); That inherent trial court power includes restricting conduct or displays that might detract from an orderly, impartial trial focused on the issues to be tried and the legitimate evidence.

Trial courts have broad discretion to admit or exclude evidence and to control the order and presentation of evidence at trial; appellate courts will upset their decisions only where they have erroneously exercised that discretion. *State v. Smith*, 2002 WI App 118, ¶¶ 7, 14, 15, 254 Wis. 2d 654, 648 N.W.2d 15; Secs. 904.03 and 906.11, Wis. Stats.. The trial court acts erroneously when its discretionary ruling contravenes nondiscretionary statutes or is based on an incorrect interpretation of the law. *Smith*, 254 Wis. 2d 654, ¶ 15; *State v. Sveum,* 220 Wis. 2d 396, 405, 584 N.W.2d 137 (Wis. App. 1998). Whether the trial court properly interpreted the law presents a question of law that this court reviews independently. *Cook v. Cook*, 208 Wis. 2d 166, 172, 560 N.W.2d 246 (1997).

B. *It was an erroneous exercise of discretion for the trial court to deprive Addison of his ability to consult religious books during trial.*

At the beginning of court on August 22, 2012, Judge Brostrom permitted the deputies to remove Bibles and other religious books from Addison (A161: 3-

10). Certainly, symbolism is found in and around our courtrooms, and trial courts have the discretion to allow displays so long as they are not prejudicial to a litigant. See *Davis v. State*, 223 S.W.3d 466, 475 (Tex.App.-Amarillo 2006, pet. ref'd) (no prejudice shown in trial court's allowing trial spectators to wear medallions bearing photograph of victim police officer); *Green v. State*, 209 S.W.3d 831, 834 (Tex.App.-Amarillo 2006, pet. ref'd)

Here the court did not inquire into the purpose of the Bible Addison brought to court. Judge Brostrom did not explain how Addison's possession of a Bible interfered with the compelling interest in conducting an orderly, impartial trial. It not only banned the Bible from the defendant's table but from the courtroom itself . It did not consider whether to allow Addison to hold the Bible in his lap, cover the title or otherwise conceal it from the jury.

To justify a substantial interference with religious beliefs or practices, the government must show that it has a compelling interest in doing so. *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); The trial court's directive was a substantial interference with Addison's First Amendment right to the free exercise of his religion.

In his ruling on the post-conviction motion, Judge Sanders merely affirmed Judge Brostrom's decision without much additional elaboration (A128:15; App. 125). Addison respectfully disagrees with Judges Brostrom and Sanders.

Interference with a litigant's fundamental right is structural error which does not require a showing of prejudice. *State v. Pinno*, 2014 WI 74, ¶53, 356 Wis.2d 106, 850 N.W.2d 207. Addison's convictions should be reversed.

CONCLUSION

For the reasons stated above, Addison requests that this court dismiss these matters or grant him a new trial.

Dated this 25th day of May, 2018

KACHINSKY LAW OFFICES
By: Len Kachinsky
Attorneys for the Defendant-Appellant
State Bar No. 01018347
832 Neff Court
Neenah, WI 54956-2031
Phone: (920) 841-6706
Fax: (775) 845-7965
E-Mail: LKachinsky@core.com

CERTIFICATION AS TO BRIEF LENGTH

I hereby certify that this brief conforms to the rules contained in Sec. 809.19(8)(b) and (c) for a brief and appendix produced with proportional serif spaced font. This brief has 5988 words, including certifications

Dated this 25th day of May 2018

LEN KACHINSKY

CERTIFICATION OF ELECTRONIC FILING

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies the requirements of Rule 809.19(12).

I further certify that:

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

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

Dated this 25th day of May 2018

LEN KACHINSKY

INDEX TO APPENDIX

CERTIFICATION AS TO CONTENTS OF APPENDIX

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 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 this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

[1] The first seven pages of the post-conviction motion were reproduced with the names of alleged victims substituted for the initials. Elsewhere, names were masked to protect victim confidentiality.

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 25th day of May 2018

LEN KACHINSKY

CERTIFICATION AS TO ELECTRONIC FILING OF APPENDIX

I have not submitted an electronic copy of this appendix, which complies with the requirements of Rule 809.19(13).

I further certify that:

This electronic appendix, if filed, is identical in content and format to the printed form of the appendix filed as of this date.

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

Dated this 25th day of May 2018

LEN KACHINSKY