CASE NO. 2018AP982-CRNM

STATE OF WISOCNSIN
SUPREME COURT

STATE OF WISCONSIN
PLAINTIFF-REPONDANT
v.
TYRONE STALLING
DEFENDANTS-APPELLANT.

Circuit Court Case No.2014CF2164

APPELLANT'S PETITION FOR REVIEW

BY:
TYRONE STALLINGS # 260270
REDGRANITE CORRECTIONAL INSTITUTION
P.O. BOX 925
REDGRANITE, WI 54970

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

Statutes

CONSTITUTIONAL PROVISIONS

Now comes the defendant Stallings preceding pro se request this court to vacate the courts Appeals denial of my direct appeal dated April 13, 2021.

This court agrees with appellant's conclusion that there is no arguable merit in challenging the trial court's denial of Stallings motion to suppress based on an "illegal" warrant.

The court appeals also agrees with the trial court that Stallings. Due Process and the Right to Counsel saying that Stallings did not request an attorney until near the end. That the tape was destroyed in accordance with routine department policy See e.g., Weissinger, 355 Wis.2d 546, ¶13n.4. Thus, there is no arguable merit to a Brady due process claim.

The court appeals stated that Sufficiency of the Evidence although Stallings was convicted after a three-day jury trial; appellate counsel has not discussed whether sufficient evidence supports the jury's verdicts. We, however, have independently considered the issue. State v. Alles, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982)(citation and emphasis omitted) To prove possession of a firearm by a felon the State had to prove felon Stallings (1) possessed a firearm, and (2) had been convicted of a felon before the date of the offense To prove possession of a short-barreled shotgun, that state had to prove that:(1) Stallings possessed a shotgun; and (2) the shotgun was short-barreled .See Wis. JI-Criminal 1342.The same testimony for possession by a felony charge suffices for

the possession element here The gun itself was shown to the jury. To prove possession with intent to deliver less than 200 grams of THC, the state had to prove that (1) Stallings possessed a substance; (2) the substance was THC; (3)Stallings intended to deliver the THC. See Wis JL-Criminal 6035. Based on the foregoing, our review of the record satisfies us that sufficient evidence supported each verdict. There is no arguable to any appellate challenge in that regard.

Although Stallings was convicted after a three-day trial, appellate counsel has not discussed whether sufficient evidence supports the jury's verdicts. We however have independently considered the issue.

On review of a jury's verdicts, we view the evidence in the light most favorable to the verdicts and, if more than one reasonable inference can be drawn from the evidence, we must accept the one drawn by the jury. See State v.Poellinger, 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990). The jury is the sole arbiter of witness credibility and it alone is charged with the duty of weighing the evidence See id. At 506. "[T]he jury verdict will be overturned only if, viewing the evidence most favorably to the [S]tate and the conviction ,it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt." State v.Alles, 106 Wis.2d 368, 376-77, 316 N.W.2d 378(1982).

I. IS COURT OF APPEALS DECISION IS WRONG AS TO THE PROSECUTOR USING THE CONFIDENTIAL INFORMANTS STATEMENT IN FRONT OF THE JURY VIOLATING MY RIGHT TO CONFRONT/CONFRONTATION CLAUSE OF THE 5TH AMENDMENT?

At Stallings trial counsel and postconviction counsel failed to argue his constitutes right to confrontation clause and his right to fact his accuser at trial on March 21,2016 the trial court enter the confidential informant statement as part of Exhibit No.44 which is the search warrant and affidavit sight by Officer Juan Duran. The Search warrant clearly states under **DESCRIBE PREMISES** "...HOWEVER THE CONFIDENTIAL INFORMANT IDENTIFIED THIS RESIDENT TO THE AFFIANT...." By the State giving the exhibit to the jury, it expressly gave the jury the informant's direct testimony. This was used by the jury to convict Stallings. (See Ex 44)

According to the transcripts Dated March 22, 2016 Officer Dean Newport Testimony under in front to the jury he say (Page 24) (9-13) Wis.Stat. §908.01(3)

Q. Now, during the course of your investigation, did you learn the nickname Tyrone Stallings?

A .Yes.

Q. What's his nickname?

A .Ty.

Attorney Hailstock, only object to (Exhibit 36) under hearsay rule because Yolanda was not there to take the stand.

This shows that the State used confidential informant's statement to establish who Tyrone Stalling is (i.e. nickname Ty) from this point on Stallings had a Sixth Amendment right to confront the states witness. The Court of Appeals stated that the officer's statement by the informant was not testimonial. See April 13 2021 opinion.

However, pursuant to "Wis. Stat. 905.10 (3) (b) the information provided by the ***informant is testimony*** which according to Bullcoming v. Mexico 564 U.S. 647 "The Sixth Amendment confrontation clause gives the accused "[i]n all criminal prosecutions', the right to be confronted with the witness against him." In Crawford v Washington, this court held that the clause permits admission of "[t]estimonial statements of witnesses absent from trial ... only where the declarant is unavailable." The Wisconsin Supreme Court In State v. Jensen 2021 WI 1031368 ¶20, "On the former, Crawford held that the confrontation clause applied only to a statement that are "testimonial," which it defined as a statement "made for the purpose of establishing or proving some fact."" Id Crawford at 51

According to the Transcripts Dated March 21 2016, Officer Dean Newport (Pages 111-112-¶'s 19-25) testified to the following:

Q. And what date was that search warrant obtained on?
A May 19th the day prior at about 2:55 p.m.
Ms. Crivello: Thank You. I move into evidence Exhibit 44.

The Court: Any objection?

Mr. Hailstock: Not at this time.

The Court: Exhibit No. 44 is received as evidence.

Pursuant to the Transcripts Dated March 21 2016 Officer Dean Newport (Page. 68 ¶7-19) the court held to the jury:

> THE COURT: Now, you are to decide the case solely on the evidence offered and received at trial .Evidence is first the sworn testimony of witnesses both on direct and cross-examination regardless of who calls the witness; Second, the exhibit that the court receives. So an exhibit becomes evidence only when received by the court .If an exhibit is marked for identification ,but not received, it is not evidence .And an exhibit that is received by the court is evidence whether or not the court sends it to the jury room with you during your deliberations.

As the transcripts, show the prosecutor mentioned and motioned the court to submit the search warrant into evidence. It contained every detailed testimony from the informant to use during deliberation. (See Exhibit 44)

The informant's statements are on Pages 2, ¶¶'s 9-14 word for word account of what he told the officer. This is by the definition testimony. Wis. Stat. 905.10 (3) (b) the information provided by the informant is testimony which according to Bullcoming v. Mexico 564 U.S. 647 "The Sixth Amendment confrontation clause gives the accused "[i]n all criminal prosecutions, .. The right ... to be confronted with the witness against him." In Crawford v Washington, this court held that the clause permits admission of "[t]estimonial statements of witnesses absent from trial ... only where the declarant is unavailable."

Pursuant to the Wisconsin Supreme Court In State v. Jensen 2021 WI 1031368 ¶20, "On the former, Crawford held that the confrontation clause applied only to a statement that are "testimonial," which it defined as a statement "made for the purpose of establishing or proving some fact."" Id Crawford at 51

The search warrant was read to the jury by prosecution to the detective and then sent into evidence, this was testimonial, and I should have been allowed to call the informant as a witness seeing how the jury was allowed to read his statement. This violated my Sixth Amendment and my right to confront the states only witness that stated he or she seen a firearm belonging to ty and seen ty sell cocaine from resident and believe ty is a convict felon.

Trial Counsel Hailstock and prosecutor and Judge discussed a question that Hailstock posed to witness Bodo Gajevic the following question:

Q: Okay. And your knowledge, did anyone see him with a gun, from the police report that you've read?

A: I believe so.

Q: You believe so. WHO?

The Court removed the jury and witnesses from the court room, and had a discussion with both attorney's and in chambers conversion to discuss if counsel was going to try and obtain the informants name. The Court obviously stopped that from happening. Once the jury was brought back in counsel Hailstock

resumed questioning the detective and did not proceed with who seen defendant with the gun. (See Tr. March 22 p.m. Page's 83 through 95, ex.)

The Court of appeals missed the point in its decision on Pg. 19 of its opinion. The fact that the jury was told there was an informant who seen me with the gun, and knew I was selling drugs. It's still violates my Sixth Amendment right to confrontation. It doesn't matter if he is an informant or not, The Constitution allows me to confront him. To state that he has some sort of special protection against the Constitutional rights of defendants is absurd. So the jury heard that there was an informant who gave the police specific testimonial statements and Stallings was denied my Sixth Amendment right to confront said informant.

My Sixth Amendment right to confrontation trumps the informer or police's right to usefulness and Stallings should have been allowed to cross-examine him to see where he obtained the information. If it is hearsay upon hearsay that is inadmissible.

The Court of Appeals violated clearly established law by stating that the informant statement to police is not testimony. The Jensen court stated differently "statement that are testimonial which defined as a statement, 'made for the purpose of establishing or proving some fact."" The informant's state is to prove so fact. It's just not hearsay it was used to convict me and according to

Crawford, Jensen, and all the other case law I had a right to confront him as to his knowledge of this information.

Had it not been for this informer, Stallings would not have been arrested, found guilty or made any type of statement against myself.

II. DID THE POLICE OFFICER HAVE PROBABLE CAUSE TO OBTAIN A SEARCH WARRANT AND WAS TRIAL COUNSEL INEFFECTIVE FOR NOT OBJECTING TO IT?

On May 19,2014 Police officer Juan Duran filed an Affidavit for search warrant An the Affiant's Affidavit He used a Confidential Informant statement Page(2)-¶9. **PROBABLE CAUSE & INVESTIGATION**. These pages here have false information in them and on page (3)-¶¶12-13 and page (4)-¶17 That affiant was contacted by confidential informant who informed affiant that within the pass seven (7) days that the confidential informant was inside of a residence located at 1134 S. 19th street in the city and county of Milwaukee Wisconsin when the confidential informant stated that the confidential informant observed a firearm belonging to an individual known to the confidential informant only as "TY" that the confidential informant further informed affiant that it was the confidential informant's belief that "TY" is a convicted felon and therefore prohibited from the possession of a firearm Affiant is aware that the confidential informant has the knowledge to differentiate between a real firearm and a facsimile .The confidential informant also observed cocaine inside of 1134 S 19th

Street and observed "TY" to engage in the distribution of cocaine from said residence within the last 7 days the confidential informant knows "TY" sells cocaine from his residence ,located at 1134 S .19th Street.

Factual statements constituting probable cause are often supplied by an informant, a victim, or citizen witness. The traditional constitutional test for assessing the sufficiency of probable cause contained within a hearsay statement had been held in Frank v. Delaware, 438 U.S. 154,156 (1978) **which required the probable cause statement to set forth the underlying circumstances at which the confidential informant had gathered his or her information "basis of knowledge" showing how the informant obtained the information was it by personal observation or involvement** (1) The confident informant never said where or how he obtained the information not did he state what kind of firearms. (2); the confident informant never sad how he or she knew (Ty) as a friend, or through someone else's. Or if (Ty) allegedly sold drug to informant; (3) the confidential informant never said how they knew (Ty) was allegedly selling cocaine out of 1134 S 19th Street. Or did he try to sell (Ty) cocaine? The confident informant never said how much cocaine they allegedly saw? Or where (Ty) allegedly keep it at in the house? And if the confident informant saw (Ty) sell cocaine from 1134 S 19th Street what was Ty selling nick, dime, quarter's?; (3) The confident informant never gave a describe of (Ty)? What color (Ty's) skin is

Black, Brown, White, Asian, Mexican? How tall, weight, age (about)? What color hair (Ty) had or if it was short or long, or balled?

Page(3)¶14.That affiant knows from personal observation that 1134 S 19th Street is a two-story single family dwelling having yellow aluminum siding ,white trim, and a gray shingled roof ;there are no number prominently displayed at 1134 S 19th Street, However, the confidential informant identified this residence to the affiant as being occupied by TYRONE STALLINGS B/M.10/01/78;That this premises is located in city and county of Milwaukee Wisconsin ;it should be noted that 1134 S 19th Street has a vacant lot to the south of this location ,which is on north east corner and to the1134 S 19th Street is a residence that displays the address of 1130 S 19th Street. Stallings is not challenging the police explanation on why the confidential informant is reliable Stallings is only challenging the false statements made in the AFFIDAVIT FOR THE SEARCH WARRANT.. On page (3) ¶12 says that Stallings was charged with felony offense of 1st Degree Intentional Homicide, a class B felony, Stallings was charge with. this is false Page (3) ¶13 the affiant is aware that Tyrone Stallings/M 10/01/78 is currently on parole supervision with the Wisconsin Department of correction as of 04-12-11.for 1st Degree Murder; this here is also false .Page (4) ¶17 For a no Knock search warrant it says that Tyrone Stallings/M, 10-01-78, being convicted of 1st Degree Intentional Homicide .this too is false

Stallings attorney filed a motion to suppress all evidence that was obtain from the search warrant See oral ruling September 18,2014.It was Deny .Stallings is not saying that he is not a felon he is only saying that he was not convict of these charges . Stallings is asking for a franks hearing Franks v. Delaware, 438 U.S.154.

When police enter Stallings home May 20, 2014 Stallings was not allowed to return to1134 S 19th Street instead Stallings was arrest down at miller compress at 9:38 A.M .While I was in the police officers car I made the following statement to officer Captain I want an attorney. At that time, Officer Captain's car video was recording as she then read me my rights. However, the police upon discovery never turned over the video tape of Captains squad car, which violates the Brady rule.

The Court of Appeals statement on Pg. 6 "The State told the trial court that, having learned at the prior hearing about the possibility of some recording, it has inquired with Caballero and was told that any such recording were retained for 120 days and then disposed of. Thus, appellate counsel and Stallings both discussed whether his due process rights were violated by police failing to keep the recording. The Court of Appeals stating in the footnote (5) (Stallings was arrested in May 2014; and the Miranda/Godchild hearing was held fifteen months later, in September 2015.) The discovery request by Trial Counsel was made within the first month of Stallings arrest. "Within the 120 days." Further,

the court failed to understand that once discovery is request and a request for all video/pictures of the arrest and search **must be turned over to counsel.** See Brady at 87

The fact that the video was not kept as required for 120 days and not turned over upon request by trial counsel is in bad faith by police & prosecution as it is standard practice that discovery is request within the first 30 days by court. Pursuant to State v. Sturgeon, 231 Wis. 2d 487, 499, 605 n.w.2d 589 (Ct App 1999) For purposes of the criminal discovery statutes, we view an investigative police agency which holds relevant evidence as an arm of the prosecution See "State V. Martinez. 166 Wis.2d 250, 260, 479 N.W.2d 244, 229 (Ct.App.1991).

The fact that trial counsel did not argue the importance of the video tape in officers Captains squad car is ineffective counsel and ineffective postconviction counsel. As this Court knows the prosecutor is an arm of the police therefore anything that the police do (misconduct) is also placed on the prosecution.

Court of appeals is correct police officer Rodolfo Ayala was part of the search team but only Detective Dean Newport sad under oath that he found the (THC) put it inside the Evidence bags put the seals on them and personnel turner all of them over .and police officer Rodolfo Ayala fingerprints are not the only ones on the (THC) found in the master bedroom 1134 S 19th street. There was also

JULIAN F.MARTINEZ W/M 09-08-92; Milwaukee Police ID #507512 Life#7 recovered from zip lock bag #3(item #12) was identified as the left index. All officers had on gloves this shows that some of the [THC] was Planted (item #12)("*14019357_5") Inside of 1134 S 19th street once again stallings is asking this court to dismiss count 3.

Conclusion

The Court of Appeal's decision violates clearly established state and federal law. In State v Jensen 2021 WI 1031368 n9 "Jensen's right under the confrontation clause of the Sixth Amendment were violated when the trial court admitted" Julie's statements)

The Court of Appeals misapplied Wis. Stat. §908.01 (3) "The warrant material was introduced only as proof police had entered the residence pursuant to a warrant. The State did not expressly reference the informant's statement within the affidavit...."

That is wrong; the prosecutor (State) did enter the informant's information to the jury by submitting it as an exhibit for the juries review. The State asked the Court to enter it as **Exhibit 44.** The Jury also heard direct evidence from the detectives about what the informant statement was, it is ineffective postconviction counsel and trial counsel for failure to argue the sixth amendment

violation that, any exhibit entered into evidence is for the jury to review, which it did in this case. **(See Ex. 44)** For the reasons stated above this conviction must be vacated, and remanded to an evidentiary hearing and or new trial.

Respectively,

Date this 5 day of May 2021

Tyrone Stallings

TYRONE STALLINGS
Pro se Appellant

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type-Style Requirements.

1.

☒ this document contains 5,000 words, or

☐ this brief uses a monospaced typeface and contains 2 lines of text.

2.

☒ This document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Palatino Linotype using 12 point type, or

☐ This document has been prepared in a monospaced typeface using Computer with _____.

Dated this 5 day of May 2021.

Respectfully Submitted,

Tyrone Stallings

TYRONE STALLINGS
Pro se Appellant
Inmate No.: 260270
Redgranite Correctional Institution
Post Office Box 926
Redgranite, Wisconsin 54970-0925