STATE OF WISCONSIN DISTRICT ONE COURT OF APPEALS

State Of Wisconsin,
Plaintiff-Respondent

Appeal No. 2011AP001249

V

Circuit court No. 02-FC-4131

Joseph Jordan,
Defendant- Appellant.

ON APPEAL FROM A DECISION AND ORDER DENYING MOTION SEEKING POSTCOVITION RELIEF UNDER WISCOSIN STAT. § 974.06 IN THE CIRCUIT COURT FOR MILIWAUKEE COUNTY, THE HONORABLE JUDGE JEFFERY CONEN PRESIDING

[redacted]

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APPEAL OF DENIAL OF RELIEF OF DEFENDANT'S § 974. 06 MOTIONS

STATEMENT OF THE CASE

Nature Of The Case: April 5, of 2003, Jordan was found guilty, in a trial by jury, of one count of First Degree Reckless Homicide; Three Counts of First Degree Recklessly Endangering Safety; and one count of being a Felon in Possession of a Firearm in violation of Wis. Stat. §§ 940.04(1), 941.30(1) and 941.29(2) respectively in the Milwaukee County Circuit Court (R.2), He was sentenced to 36 years of initial confinement, to be followed by an additional 20 years of extended supervision. This appeal is related to the Circuit Court's denial of Jordan's recent motion under Wis. Stat. § 974.06, (R.84, 90,120, 122, 126) on April 11, 2011 and reconsideration motion which was denied by the court on May 9th of 2011 (R.138,) (App. 1)

PROCEDURAL STATUS OF THE CASE LEADING UP TO THIS APPEAL

After Jordan's conviction, Jordan filed a timely notice of appeal and this court affirmed his conviction. On June 14, 2004, to the Wisconsin Court of Appeals which affirmed the conviction on) June 28, 2005, The Supreme Court of Wisconsin

denied review of Jordan's appeal on January 20, 2006. On April 25, 2007, Jordan filed a Petition for Writ of Habeas Corpus pursuant to 28 USC 2254 in the United States District Court for the Eastern District of Wisconsin along with an Abeyance Motion. Those pleadings were denied by the District Court on May 3, 2007. After filing a Notice of Appeal, the Seventh Circuit Court issued a certificate of Appealablilty on February 11, 2008 to address whether trial counsel rendered ineffective assistance in failing to interview two witnesses along with any other issues "identified by counsel" (emphasis added) (App.25 part B). On February 22, 2008, the 7th Circuit Court of Appeals appointed Michael J. Summerhill of Kitten Muchin, and Rosenmann LLP to represent Jordan in this matter.

On May 5, 2008, Jordan, through counsel and AAG Christopher G. Wren, stipulated an agreement in which both parties agreed to request that the 7th Circuit Court of Appeals enter an order remanding this matter to the district court with instructions to grant Jordan's Abeyance Motion and stay his petition for Writ of Habeas Corpus and hold it in abeyance for a period not to exceed 75 days within which Jordan shall initiate any and all parallel state relief proceedings. This matter was subsequently remanded to the district court for actions consistent with the parties' agreement (App 42). However, appointed counsels were unable to proceed in Wisconsin and Jordan was forced to file his petition pro se due to a dead line (App 43 ¶1)

DISPOSITION IN THE TRIAL COURT AND STATEMENT OF FACTS RELEVANT TO ISSUES PRESENTED FOR REVIEW:

On January 4th of 2009 Jordan filed a motion pursuant to Wisconsin Stat § 974.06 alleging ineffective assistance of counsel, among other claims for trial counsel's failure to contact witnesses,(R.84, 90) Jordan established that these witnesses were vital to his defense by submitted affidavits that alluded to his innocence. The Circuit Court unreasonably concluded that these witnesses' stories were not credible because of all things - they were too consistent.

The Court ruled that several witness will not describe a car the same, and since the defendant witnesses did, they must have been coached by the defendant, to testify to the allegations contained in their affidavits, the Court hinted (App 14-25). The Circuit Court abused its discretion in denying the defendant motion based on speculation that the witnesses were coached by the defendant to lie. Its decision was also contrary to law established by the Court of Appeals as well as the Supreme Courts of Wisconsin and the United States.

I THE CIRCUIT COURT ERRONEOUSLY EXERCISED ITS DISCRETION BY ADOPTING THE STATE'S BRIEF WHOLESALE AND WITHOUT EXPLANATION AS SUPPLEMENTAL REASONS FOR DENYING DEFENDANT'S MOTION

A · Newly Discovery of Evidence; Standard of Review

An Appellate Court reviews a Circuit Court's determination as to whether a defendant has established his right to a new trial based on newly discovered evidence for an erroneous exercise of discretion Thus, the Court of Appeals will find an erroneous exercise of discretion if the Circuit Court's factual findings are unsupported by the evidence or if the Court

applied an erroneous view of the law. ***In re Marriage of Trieschmann v. Trieschmann***, 178 Wis.2d 538, 541-42 (citations omitted).

The Newly Discovered Evidence

The newly discovered evidence in this case consist of (1) a sworn affidavit by Quincy in which Quincy admitted that he (not Jordan) committed the shootings; (2) testimony from Lionne Davis that Quincy confessed to him that he committed the shooting; (3) testimony from Charley that Quincy confessed to him that he committed the shootings and that minutes before the shooting Charley observed that Jordan was not in the car which was involved in the shooting; and (4) testimony from Deyon Lee and Jason Hohnstein consistent with that.

1 The Trial Court Abused its Discretion When it Adopted the State's Position Without Explaining the Factors upon Which its Decision is based

The Circuit Court denied Jordan's motion for a new trial without explaining the facts or the appropriate legal standards upon which its decision is based. With a mere ruling "by right" the Circuit Court adopted the following position of the State in which was erroneous (App 20). ***Dileo v. Ernst & Young***, 901 F.2d 624 (CA7 1990), The Court did not explain why Quincy's[1] confession does not create a reasonable doubt as to Jordan's guilt and whether Quincy was a statement against penal interest, (App20). At most, the Court determined that the affidavits which Jordan presented were contrived and incredible because they

[1] To prevent confusion between the two Grants (Quincy L. Grant and Charley L. Grant) they are not related according to Charley (R.150; 5). However they will be referred to as Charley and Quincy.

contain too much detail regarding Blake's car (App17-18). The problem with this ruling, as it pertains to Quincy's affidavit, is that Quincy did not describe either Blake's or the victim's car (App29 left ¶ 6-7).Therefore, the Court's ruling is not based upon the facts of record (Id). Moreover, Charley, Deyon Lee, and Jason Hohnstein were all acquaintances of Michael Blake. In fact, Lee told the detectives *they all* use to rent the "hype" (as in drug addicts) car that was identified. (App 40) (R151:14, R; 150; 7).

More importantly, the details in the affidavits do not make the affidavits incredible. E.g., ***Rohl v. State***, 65 Wis. 2d at 695, Furthermore, the details in the affidavit may merely create an issue of credibility, but issues of credibility are for a jury to resolve. See ***State v. Anderson***, 137 Wis. 2d 267, 275-76 (1987). The Court, in fact, acknowledged it (App 8). The Court, nevertheless, disregarded the legal principles (App7*)* ***State V Guerard*** *2004 WI 85 ¶42.(* ***Chambers v. Mississippi***, 410 U.S. 284, 35 L. Ed. 2d 297, 93 S. Ct. 1038 (1973).

2 Analyzing the Circuit Court's ruling of Jordan being uncooperative pretrial with trial counsel

First, the trial Court ruled that Jordan was not cooperative throughout the course of the preparation for his trial until the very end. Thus, any lack thereof was Jordan's fault (App14-15). This was simply a paraphrase of the State's argument (App12). The Court considered no other facts relevant that was presented by the defense. The problem is this opinion is not supported by the record (App14-15).

The facts are: Russell Bohach was appointed to represent Jordan 10-30-02 (R10, 11). Pretrial was set 12-18-02 (R; 63) and trial was set 3-3-03. Jordan wrote to trial counsel several times within those five weeks, even calling trial counsel to no avail (App26-28) (R.12, 13) .The trial Court set another pretrial hearing on 1-16-03 in which Jordan wasn't present. However, another month and a half went by with no word from counsel regarding preparation for trial. The defendant wrote letters again, and filed a motion for new counsel on 2-05-03. See (App Id). After filing this motion attorney Bohach traveled to Green Bay Correctional On 2-12-03 (two weeks before trial) to see Jordan because he was mad about the motion Jordan filed against him. With these facts in view, this is contrary to the State's and Circuit Court's opinion. [2]

Therefore, trial counsel represented Jordan for over four and half months before he actually talked to him about the case, which was two week before trial, March 3rd, 2003. This was only after Jordan wrote the trial Court and counsel several letters to no avail leaving Jordan to *literally* file a motion for new counsel, citing ethical rules that counsel violated (App.27-28). Any reasonable defendant would have been upset, just as attorney Bohach was upset at the fact that Jordan filed such a motion on him. Therefore, the last minute

[2] When addressing the trial Court, the State told the Court that attorney Bohach should address Jordan's allegations and that he didn't know whether Jordan was being dilatorial or not, see; App# (R.64; 10-11). Jordan told trial Judge Franke that he didn't provide Bohach with the information at the times he showed up for Court because Bohach would always tell the defendant he'll get it from Jordan when he would visit him, but Bohach never did show up to discuss the information (R.64;7, line -10). Bohach did not dispute this. Jordan also told the Court that he tried calling and writing, but got no response (ID).

visit from trial counsel was not fruitful. However, the trial Court forced counsel on Jordan and gave the defense a month to prepare.[3]

3 Circuit court ruling on Charley Grant

The Circuit Court ruled that there was a significant dispute that trial counsel knew of Charley and that Jordan had not proved otherwise (App 9). However, this is also not supported by the record with trial counsel own words (R65; 5-6). This police report provides Charley's name, number, address, and Kolett Walker tells them of a house where Charley lives. Therefore, the Circuit Court's ruling is not supported record. See (app 31-Bottom right hand corner).

4 Analyzing circuit court ruling on Deyon Lee

When considering the deficiency of counsel's performance in not contacting Deyon Lee, the Court ruled Jordan had not proved that Lee may not have been found and assumed (App18) that even if trial counsel was deficient in his investigation it doesn't change anything. In the same breath, the judge held counsel wasn't deficient. First, courts cannot both assume deficient performance and then hold that counsel's performance was not deficient, ***Sussman v. Jenkins***, 642 F.3d 532, 534 (CA7 2011) (App.15).

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[3] On the day of trial 4/1/03, a hearing was held regarding the trial attorney investigation, questions of witnesses, and the defendant ability to represent himself (R.69). During this hearing the defendant - told the courts that trial attorney won't talk to the victims and witnesses (R64; 13-14, line 6).When asked if the defendant wanted an adjournment the defendant stated "no" (R69; 17).Trial attorney told the courts the reasons why he believe defendant is upset (R.69;10 line 4).The defendant told trial court that counsel won't subpoena witnesses and the names given to counsel are names out of the police reports (R; 69 12 lines 6, 13, line 12). With these facts in view, hearing Judge Conen ruling is not supported by the record, see (App 14-15)

Moreover, the Circuit Court found it odd that a "*seasoned criminal trial attorney* (R.148; 17) would not question one witness (Deyon Lee) out of eleven. ***Id.*** First, a lawyer's effectiveness is not measured by his success ***United States v. Hammonds***, 425 F.2d 597 CADC 1970). However, Bohach failed to question 5 witnesses (App 34). Furthermore, Deyon Lee testified that, though he was running the streets, he could have been contacted through the address provided (R.151; 11-12). Furthermore, the other police report was the main source of information in which the mother of Lee's child told another person that Mr. Lee was involved in the homicide of the victim in this case (App 38). Yet when the Circuit Court made his conclusion of fact on the phone report, he focused on the one address when there was more than one source of information to contact Mr. Lee other then the address Lee said he was never there but still could have been contacted there (i.e., left a message). However this still doesn't relieve trial counsel of his duties. Furthermore, the private investigator report clearly refutes "any" act to pursue Mr. Lee (app 28 bottom right a hand corner).

5 Analyzing Circuit court ruling regarding trial counsels failure to present a complete defense of Jordan's defense

Finally, the lower courts standard regarding Bohach failure to present a complete defense (left hand right hand) is erroneous. The relevant question is *not* whether counsel choices were strategic (App21-22). But the question is whether trial counsel's actions were reasonable, ***Roe v. Flores Ortega***, 528 US 470 (2000). However, Bohach went on a fishing expedition with

the State's witnesses in which the defense was founded on and had no ideal that the State's witnesses were going to testify differently (R.72; 80, 84) (R. 64; 13-14, line 6). Then the evidence that Jordan was right handed was never presented for the jury who questioned the availability of the evidence after Bohach made the closing argument *(App*35-36). (R. 75; 245-47), and called fiction by the state (R.75; 260-261).

From these facts on the record, its clear the Circuit Court only paraphrased the State's submissions and went on further to adopting the States brief without explanation (App19-23). The Supreme Court has explained why such rulings should be frowned upon see; ***Bright***, 380 F.3d at 732. Here the Court's rationale for denying Jordan relief as expressed in open court relied on a perceived lack of resulting prejudice rather than on resolution of any factual dispute. The Court gave no more reason for its wholesale adoption of the State's position, asserting only that they were persuasive. This was deemed insufficient in ***Trieschman***. The post-conviction Court's actions reflect, not merely the erroneous exercise of discretion by failing to explain its wholesale adoption of the State's arguments, but an abdication of its judicial role ***Bright v. Westmoreland County***, 380 F.3d 729 731-32 (CA3 2004). Under these circumstances, it is clear that the Circuit Court not only abused its discretion, but also *"essentially"* infringed on the fundamental fairness of the proceedings. Whatever the State's argument, the Court may or may not have rejected *sub silentio*, and reason for that decision, we simply

do not know, thus rendering appellate review impossible without remand for specific findings of fact, ***Trieschmann*** at 544 (quoting ***Wurtz***, 97 Wis. 2d at 108). ***Jefferson vs. Upton*** 130 S. Ct. 2217, at 2223 (2010)

II THE CIRCUIT COURT DENIED JORDAN A MEANINGFUL OPPOUTUNITY TO BE HEARD WHEN IT REFUSED TO ALLOW HIM TO REPRESENT HIMSELF THROUGH THE 974.04 PROCEEDINGS

Although Jordan did not have a right to counsel on his postconviction motion, the court made a determination that he was incompetent to represent himself, and therefore took it upon itself to appoint an attorney, therefore, that attorney had to be competent and provide effective representation in this case, lest Jordan end up disadvantaged by the courts decision to appoint ineffective counsel and then subsequently hold Jordan accountable for counsel's ineffectiveness, which is exactly what occurred in the case at bar and such appointment deprived Jordan of fundamental fairness of the 974.06 proceeding.

On January 15, 2010 and October 30, 2009 the Honorable Jeffrey A. Conen engaged in a colloquy regarding Jordan's motion to represent his self by enquiring, primarily about Jordan's understanding, age and how far he got in school. The court ruled that Jordan was "not competent to represent himself in this matter [because] he had an opportunity to do so in the past and once he did that he sought advice and representation by counsel in the continuation of this appeal" and that Jordan had "limited education". With this ruling,

the court forced Jordan to precede with counsel (R. 148; 2-15) also See; (R.149; 1-13).The court did not give Jordan an opportunity to put forth any new information as to why he should have been allowed to represent himself, and therefore, violated Due process by forcing Jordan to proceed with counsel who otherwise did not adequately present Jordan's issues. ***Little V. Streater,*** 452 U.S 1 at 5-6; 101 S.C t. 2202 at 2205. The court, in this instance, did not give Jordan a meaningful opportunity to be heard when it refused to allow him to represent himself and forced him to be represented by an attorney who refused and simply did not care enough about Jordan's interest to represent it wholeheartedly. See ***United States v. Harbin***, 250 F3d 532, at 543 (2001 7th Cir)

Jordan made several attempts to get counsel to either object to certain questions posed by the State that elicited prejudicial testimony or for counsel to question, call or recall certain witnesses about issues extremely relevant to his defense (as discussed above and below) to no avail. Jordan had no control over his defense, its presentation, cross examination of witnesses or the ability to impeach evidence he and counsel knew to be false, See (page 29-37). Which clearly violated his Sixth and fourteenth Amendment rights see; ***McKaskle v. Wiggins***, 465 U.S. 168, 173; 104 S.Ct 944 (1984). According to Article 1 § 7 of Wisconsin's Constitution, Jordan had a "right to be heard by himself *and* counsel" and this is so because "a defendant's rights to self-representation under the Sixth Amendment plainly encompass certain specific rights to have his voice heard. The

pro se defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court." ***McKaskle,*** 465 U.S. 168 at 174. Also see **Id** at 178. Here, Jordan was not allowed to "present his case in his own way" yet he is expected to suffer from the ineffective presentation of appointed counsel -that he did not agree with- and that was otherwise not his. "Some basic rights can never be treated as harmless error", ***Harbin,*** supra, 250 F.3d 532 at 542, and this is one of those rights. "The 14th amendment bars a state from denying any person a fundamentally fair proceeding. The due process clause of the federal constitution thus prohibits the state from placing undue restrictions upon a prisoner's meaningful opportunity to be heard." ***Piper v Popp,*** 167 wis.2d 633, 658; 482 n.w.2d 353 (1992). ***Evitts v. Lucey*** 469 US 387, 393 (1985)

In the case at bar, Jordan was not given a meaningful opportunity to be heard as he was forced to rely on counsel when he consistently requested the option to represent himself, (R.98,-100,112,115,118,148,149) which he could have done effectively at this limited hearing, ***Adam V. US EX REL MCCANN***, 317 US 269, 279, 63 S.CT 236. In doing so the court affirmatively hindered Jordan's access to the court ***Piper v Popp,*** 167 wis.2d 633, 658,

If the court felt that the proceedings were too difficult for Jordan to be representing himself, it could have given Jordan the option of having standby counsel to aid him

whenever it became clear that he needed such assistance. since the court forced counsel on Jordan and counsel failed to preserve the record for Jordan's appeal, the circuit court's order should be reversed (R.116, R.138, R. 149) and Jordan should get another opportunity to preserve the record by putting forth evidence of his innocence and facts regarding each witness relevant to that endeavor.

III JORDAN WAS DENIED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL

The general principles which apply to Jordan's claim that he received constitutionally inadequate representation are well settled. In ***Smith v. Wiggins***, 539 U.S. 510, the Supreme Court applied this basic principle in expressly determining whether a lawyer's pre-trial investigation was constitutionally deficient. ***Wiggins***, 539 U.S. at 523. The Court found that this limited investigation not only was unreasonable under then-applicable standards, but that it was unreasonable in light of the leads that counsel actually could've discovered - leads which would have caused any reasonably competent attorney to realize "that pursuing these leads was necessary to making an informed choice among possible defenses. ***Id*** at 524. The court also found that, because counsel spent insufficient time considering and developing a trial strategy, counsel's failure to investigate thoroughly resulted from inattention, not reasoned strategic judgment. Also see ***State v. Maloney*** 2005 WI 74 at ¶23, (quoting ***Smith v. Singletary***, 170 F.3d 1050, 1054 (1999)).

Similarly, in the case at bar, it is Russell Bohach failure to investigate that assailed, rather than informed tactical decisions made in the wake of a reasonably thorough investigation. If the test is satisfied, relief is required, "No supplemental, absent inquiry into the fairness of the proceeding is permissible." ***William v. Taylor***, 529 U.S. 362 (2001). Jordan need not prove that acquittal is more likely than not or that the evidence is legally insufficient but for the identified errors or new evidence. ***Kyles v Whitley*** 514 U.S. 419 at 434-35 (1995).

A) Deficient Performance Failure to Investigate and Prepare For Trial

Contrary to the Circuit Court's ruling (App14-16), fortunately, it is well recorded that trial counsel Russell Bohach made no attempt to contact Jordan regarding trial preparation until well after 4 months of representing Jordan and at the very last two weeks before trial (R.16) thus filing no motions until the day of trial (R.17, 18, 19). However, these motions and the eleventh hour visit were only a reaction of the motion Jordan filed (R.13). When counsel refused to accept Jordan's phone calls, respond to his letters (R12) or accept any information at pretrial court hearings (R 64; 5-7). Bohach knew three months prior trial that Jordan wasn't going to take a plea and planned to go to trial (R.63; 3). This resulted in counsel *allegedly* hunting down 14 witnesses at the last minute. Bohach testified (that from his experience trial attorneys some times go 8 months trying to find witnesses and or only to find the

witnesses after trial) (R148;48). Trial counsel's 11th hour preparation was unreasonable ***US Vs Bowers*** 517 F .Supp 666, 617 (Wd. Pa 1981), SCR 20:13 (2), SCR 20:11 ABA commentary (4) . ***Restatement (Third of agency §§ 1.01, 101 cmt. f (1), 801 and 807 (2006) Also see; Restatement (First) of Agency §§ 385, 385 (1) cmt. a and 385 (2) (1933)***

Indeed, The principle is so fundamental that the failure to conduct a reasonable pretrial investigation may in itself amount to ineffective assistance of counsel" ***Lambert***, 388 F.3d 1056, 1063, (CA7 2007) ***US V. Tucker***, 716 F.2d 576, 583 n. 16 (1983),***STATE V Lentowski*** 212 WI 716 (1997). In violation of this first basic principle these deficiencies were unreasonable since the case against the defendant wasn't an average homicide case. For, the victim(s) had identified Michael Blake Jones as the shooter. The victim Derrick Clark told three different detectives that Blake was the driver and shooter (R.75; 248). The other victim, Antonio Rivera, testified he may have told detectives Blake was the shooter and shot with the right hand (R.72; 84). The 3rd victim, Arnell Rhodes, said the driver or the person behind the driver shot (R.72; 13). In light of the State's evidence that, (1) Jordan, who has a learning disability and had a second grade reading level at the time of his arrest (R.75; 58-59) signed a confession written out (2) and the girl friend of the suspect "Blake" identified Mr. Jordan as the shooter (R.73; 26-27). This would have lead any reasonable "*seasoned criminal trial attorney*" to initiate a prompt investigation especially, in light of Ms. Washington being a

felon (R.73; 43) and being fully aware that Jordan had education problem(R 69; 55-75).

However, Bohach testified that his 11th hour visit, which was (two weeks) before trial, was more than enough time to investigate at the post-conviction hearing (R.148; 20). However, during pretrial proceedings attorney Bohach told the Trial Court something different (R65; 8)[4]. Furthermore, counsel couldn't quite get his story together about the 11th hour visit stating, "*Rather Jordan was extremely uncooperative who refused to give him name (R.148; 19) or couldn't come up with names*" (R.148: 21). Bohach told the trial court a different story (R.64:14) "that he didn't know whether Jordan had name up at Green Bay or not." In fact, Jordan told the Court that Bohach refused to discuss information or to discuss the case with him at court appearances and wouldn't show up for visits. (R.64; 7).

B) Attorney Bohach Failed to call important defense witnesses

Contrary to the Circuit Court's ruling, (App16), pretrial Jordan gave Bohach 11 names of potential witnesses from police reports (R69; 4) (App34). However, Jordan felt counsel was being negligent in the investigation (R.152; 6).

Lee

One of these witnesses was Deyon Lee (App34). The purpose of calling Lee was to question him about information in a witness statement that could exonerate Jordan (App 38). The

[4] Although, the only person to identify the defendant as the shooter in this case is Tashawnda Washington, (Blake's girlfriend) However, Attorney Bohach felt Kolett Walker was the state star witness (R.64:8) who didn't witness the crime (R 72; 101), yet counsel didn't even talk to her (R.65; 8) and this was a week before the *new trial date* but noting to the court the importance of these witness prior to her additional statement (Id).

other purpose was to prove Jordan wasn't in possession of Lee's phone which the state strongly used as a foundation to prove its case (App39), (R69; 4), (R.74; 77-78). Both police reports have numbers to contact Deyon Lee (App38-39). Attorney Bohach testified that he didn't recall Deyon Lee being a person that was questioned,(R 148; 29) however, Lee was one of the names attorney Bohach identified as Being one of the names on the list he received from Jordan.(R.148; 29). Yet Lee's name is no where in the private investigator reports (app28). Attorney Bohach's failure was out right unreasonable (R. 151; 29).

Lee testified that although he was running the streets he could have been contacted at either of the addresses or numbers provide in the discovery but no such attempt was made (R.151; 11-12). Lee testified that he made efforts to initiate Jordan's lawyer awareness to contact him by telling Jordan's mother (R. Id.; 16) and if Bohach would have contacted him he would have testified that: 1) The shooting he is testifying about happened on 6/22/02 (R. 151:13) about 9: 30pm (R. 151; 15); 2) that on 6/22/02 Blake and himself forcibly took money from Jordan. Later that night Lee made calls to Blake Jones from his own cell phone for some money (R. Id: 6); 3) that right after the shooting he saw Blake in the black car they usually drive with four black males; 4) at this time Blake asked him to hold a gun for someone because they just got thru shooting at someone on Keefe Street(R Id; 8); 5) the person in the back seat behind the driver with the

gun name is Q (R. Id: 7) whom name he now knows to be Quincy (R151; 15); and 6) Lee was receiving threats from friend of Quincy while at Oshkosh Correctional and became frightened about testifying until he moved to another institution which is the cause for any inconsistency. (R Id: 18).

Charley

On 3-20-2003 Charley name came up in a police report involving Kolett Walker, and Regina Young (App.31 bottom right). Bohach explains the significance of securing a statement from these three individuals (R.65:8). Yet Bohach testified that he didn't recall Charley as being a person of interest in his investigation. (R148:30). However, the police report (App 31) and the pretrial statement of Bohach reflects different. (R65: 8). Contrary to Bohach testimony (R.148;30) Charley was living at 2921 N. 6th St. and 3400 Nth Richards from 2000 until he got incarcerated in 2003 and that no one contacted him there. The private investigator contact receipt supports this (R. 150; 30-31) (App 28-bottom right). If Bohach, would have contacted Charley he would have testified that he was at the gas station fixing his car (R150:6-7) and at that time Blake was driving a black newer model Sebring with a light skinned person in the back seat, but he didn't get a good look at who the person was in the back seat (R150; 7). However, Quincy told Charley that he was the third person in the car and that he was the shooter (Id; 11). Charley, after a short conversation with Blake, Blake got excited because he saw a maroon car and pulled off a few minuets later he heard shots (Id.). Moreover, Quincy name isn't

in his affidavit and that he never told the detectives about Quincy (R. 150; 28), this was information he didn't wanted to relate to the detectives and that the other information he was using to convey to Jordan's people for the lawyer to contact him (App14-15).

3. Trial counsel's failure to present a complete defense by failing to submit evidence that Jordan is right handed

The Supreme Court has reiterated since ***State v. Harper***, 205 N.W. 2d 1 (1973), that trial counsel and the defendant may, on the basis of considered judgment, select a particular defense from among the alternative defenses that are available ***Weatherall v. State***, 73 Wis. 2d 221, 242 N.W.2d 230 (1976).

Under the circumstances (that Bohach failed to question-subpoena key witnesses for Jordan defense), the only defense Jordan had left was to present evidence that Jordan and Blake is right handed. The defense was founded on the victim's statement that Blake fired a "Black Hand gun out his window with *his right hand*." (R.72; 84).

Contradicting to the victim's statement was Blake girlfriend Tashawnda Washington. She stated Jordan was the one who fired the shots out of Blake window with his right hand from the passenger seat, and a statement Jordan signed that was consistent with her testimony. However, the defense for signing the statement was that Jordan couldn't read it and was hoaxed into signing a confession he didn't make. Although Bohach made the closing argument about Jordan having a disability, and right handed, the evidence was never presented to support the defense

(R.75; 242, 254). Jordan Points out to this Court that Jordan testified how Bohach would *double talk* him about particular defenses (R.152; 7). Essentially, stating Bohach refused to submit the evidence that Jordan couldn't have read the statement which was contrary to the detectives' testimony because he had a 2nd grade reading level (App 30, top left corner).

The defense to discredit Washington was to concede that Jordan was right handed and present the evidence when he testified (App 30, 37 left sides) but explain the rationale and disadvantages of Jordan actually discharging a firearm with his right hand from the passenger seat. However, Bohach never presented that evidence (Id) but made the argument. (R.75; 245-47)

The problem with this is Bohach had no ideal that Blake wasn't going to testify and that the victim was going to deny the statement they gave to the detective since he didn't question them before trial (that Blake fired a "*Black Hand gun* out the driver window with ***his right hand.***" (R. 72; 84). Again, Jordan points out that he related his concerns to the Trial Court before trial started about Bohach not questioning the State's witnesses (R. 69; 13).With this in mind, the only shred of evidence left for the defense was not presented. This essentially left Jordan defenseless[5]. The State, seeing that Jordan was defenseless, fired back (R.75; 259) and again (R.75; 260-261).

[5] In fact, he related to the jury what he *assumed* Blake, (R.71.34) and the witnesses-victims would attest to, (R.71:33, line8-12) and went on a fishing expedition (R.72;80)

The problem with this is the fact there is nothing "fictional" about Jordan being right handed (APP 30 left side) and at the time Jordan was arrested he had a 2nd grade reading level (app 30, top left corner). However, hearing these statements from the State, the jury realized that attorney Bohach submitted no evidence on Jordan's behalf and asked for evidence of Jordan being right handed, left handed or ambidextrous *(App*35-36).

Given the Trial Judge's warning that no questions would be accepted during deliberation (R.69; 13-14), Bohach didn't presenting a shred of evidence to support Jordan's defense, his failure(s) forced the jury to believe that, in fact, Bohach was writing a *"fiction book."* Counsel's actions were clearly unreasonable. (R.75; 260-261).

Since there is no evidence to give inference that Jordan fired a gun with his left hand, and that such inference would be unreasonable in light of the evidence and attorney Bohach's closing argument (R. 75; 245-47), the inference should not be upheld See ***Epoch Producing Corp v. Killiam shows, Inc.***, 522 F.2d 737, 744 (1975).

However, contrary to the Circuit Court's unexplained adopted opinion that attorney Bohach actions were strategic (App21-22), the question is not whether counsel's choices were strategic, but the relevant question is whether counsel's actions were reasonable. See ***Roe***, 528 U.S. at 481. Again, ***the defense*** was founded on the victims' testimony, in which Bohach

cross-examined the victims on a fishing expedition, assuming responses (R. 72; 80).

It is clear that Bohach tip toed around the State's case and made an investigation based only on what the defendant had to share; Courts have frowned upon such inaction in ***Washington v. Smith***, 219 F.3d 620, 631 (2001) See ***Leibach***, **347 F.3d 219 at 236**

Trial counsel's deficient performance prejudice Jordan's defense a trial

There can be no reasonable dispute that trial counsel's errors prejudiced Jordan's defense and that, but for those errors, there exists a reasonable probability of a different result, it is the cumulative effect of those error and other issues raised here that controls, ***Alvarez v. Boyd***, 225 F3d 820, 824 (2000), ***State v. Thiel,*** 2003 WI 111, ¶¶ 59-60. Jordan will address the cumulative prejudice in section) **(VI.)**

IV. NEWLY DISCOVERY OF EVIDENCE ENTITLED JORDAN TO RELIEF

Newly discovery evidence claims, presents a due process issue, ***State v. Love***, 2005 WI 166, ¶ 43, n.18, which generally are reviewed de novo. ***State v. Coggon***, 154 Wis. 2d 387, 395 (1990). However, the Courts have stated without explanation that newly discovery evidence claim are reviewed for erroneous exercise of discretion. ***State v. Plude***, 2008 WI 58, ¶31. Even then, factual finding are reviewed for clear error. Wis. Stat. § 805.17(2). And the reasonable probability analysis is an issue of law review de novo. ***Plude***, at ¶ 33. Of course, whether evidence is material and not merely cumulative is also reviewed

de novo even in the context of review of discretion ***Plude***, at ¶ 31 A defendant must establish by clear and convincing evidence that "(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative." ***State v. Armstrong***, 2005 WI 119, 283 Wis. 2d 639, P161, 700 N.W.2d 98 (citation omitted). Once those four criteria have been established, the court looks to "whether a reasonable probability" exists ***Id.*** (Citation omitted). The reasonable probability (looking at the new evidence and the old evidence), factor need not be established by clear and convincing evidence, as it contains its own burden of proof ***Id.***, PP160-62 (abrogating ***State v. Avery***, 213 Wis. 2d 228, 234-37, 570 N.W.2d 573 (1997)). Also see ***state v EDMUNDS*** *2008 WI App 33 ¶ 17.* Factual Background stated below.

Newly discovery of evidence

Jordan

In the course of the pretrial, Bohach didn't do a reasonable investigation and *doubled talked* Jordan about trial strategies (R. 152; 5-7). After Jordan's conviction he learned that Quincy was the actual shooter in the case he is charged with from Lonnie Davis (R.147; 35, App 43¶ 10). At this time Jordan was in segregation unit at Wisconsin Secure Program Facility while Quincy and Davis were in Green Bay Correctional Institution (App43 ¶10). Jordan received affidavits from Charley, Deyon Lee, and Jason Hohnstein, Davis after his trial. (R. 152; 4-35). However; out of his control, Jordan ended up at

the same institution with Charley, Quincy, and Davis (R.152; 30).

Davis

After religious services Quincy told Davis he was the shooter in Jordan's case (R. 147; 16, 27-28, 34) Davis then wrote to Jordan to explain everything. In response Jordan wrote Davis back and asked him to put everything in an affidavit but Davis refused and stated that he'd have to check with Quincy first (R. Id; 26, 35). After getting permission from Quincy to prepare an affidavit for Jordan (Id; 26), to be sure Davis showed it to Quincy before notarized it (R. 18, 27-28, 34). Davis would not have done something like this without the permission of Quincy (Id; 35). Quincy told Davis the shooting happened on Humbolt and Keefe Street (App 44) However; Davis could only remember at the moment that the shooting happened on the East Side in 2002 (R. Id: 24, 37). Quincy came forward because he was trying to get his life together (Id).

Quincy

Quincy had been at Green Bay Correctional Institution for approximately six years (R.147; 6). Quincy was showed his affidavit that he signed, notarized and acknowledged that he reviewed it before (Id; 11). However, when asked if he knew Davis, Jordan, or speaking with Davis about the shooting that took place June 22nd, 2002, or his signature on his affidavit Quincy exercised his rights not to incriminate himself (Id; 6,11-15).

Lee

Deyon Lee had no contact with Jordan until probably 2007 when he got locked up (R. 151; 17, 30) and they wrote to each other sometimes (R. 151; 17). Lee was never incarcerated with Jordan (R. 151:5). In 2002, about 9:30 pm. or so Lee called Blake to borrow some money they took from Jordan earlier that day (R. Id; 6). At this time Blake was in the Black car they usually drive, rented by Glen, with three black males. Lee only knew one other person in the car besides Blake and "only knew of" the individual in the back as "Q" (R.151:7). Blake asked Lee to go brother's birthday party but Lee refused, so Blake asked him to hold Quincy's gun because they just got done shooting at somebody on Keefe Street and Jordan wasn't in the car (R.151: 7-8). However, Lee was receiving threats while at Oshkosh Correctional Institution from Quincy's friends (R.151; 18). At this time Lee learned of Quincy's real name. (R Id: 15). This made Lee fearful so he gave an inconsistent statement from his affidavit to the detective (R. Id; 18). However, by the time it was time for Lee to testify he had moved to a work release center and felt safe to testify consistent with his statement (R. Id; 30).

Charley

Although the State succeeded (intentionally or unintentionally) in sometimes confusing Charley concerning the timing of the matters that happened 9 years ago (R. 150; 19-20), Charley signed and sent the defendant an affidavit after his

conviction once being celled up with his friend Quincy (R. 150;8). Charley knew Blake, Jordan, Lee and Quincy from the street, associating from time to time (R. Id: 9-10). In 2002 Charley was at the gas station on Holton and East Keefe Street when fixing his car while having a brief conversation with Blake, who got excited when Blake saw a maroon car (R. 150; 6). At this time Blake was driving a black newer model Sebring and had a light skinned individual with braids in the back seat, but didn't get a good look (R. Id; 7). However, Jordan wasn't in the car. (R: Id.). Soon after Blake and the maroon car pulled off Charley heard 4-6 shots R. Id: 6). Charley saw Blake a few days after the shooting who looked troubled about avoiding being charged with homicide and getting advice from a relative on the case (detective Shannon Jones) (R. d; 11).

Although Quincy's name isn't in Charley's affidavit, Quincy was the third person in the car (R. Id: 12). Charley didn't want to relate this information to Jordan and that the other information in his affidavit was only to convey to Jordan's people to have his lawyer contact him (R Id; 8, 15).However, Charley sent the affidavit while he was at Dodge Correctional Institution, but ended up in Green Bay Correctional Institution with Jordan and Quincy.(R Id:).

Hohnstein

Jason Hohnstein testified has known Jordan all his life (R.150; 33). Hohnstein identified that he don't know where the contents of the affidavits came from, that he was drunk when he signed it, and he was just trying to help a friend (R.150; 40).

Jason stated he doesn't know anything about the case or the information contained in the affidavit. However, when asked if he was present at the gas station June 22nd, 2002 around 10:00pm Hohnstein stated "I don't know and don't remember". (R. 150: 37).

A. Evidence Discovered After Conviction.

There can be no rational suggestion that Jordan knew or should have known prior to his trial in 2003 that Quincy was the assailant or confessed to either Charley or Lonnie Davis. Prior to Jordan conviction he made reasonable efforts through trial counsel to contact Lee, Charley and Hohnstein (R.152; 20-25, 28, 33). At the time of Jordan's trial Quincy and Charley, and Lee were on the street while Jordan was housed at Green Bay Correctional Institution. Quincy's admissions to Davis had not existed. While Charley was covering for Quincy (App 32-33), he was trying to do the right thing for another (R.150; 12). Charley sent Jordan the affidavit in 2003 of August (R. 150; 16); the private investigator report also establishes that none of these witnesses were contacted (App28 bottom-right). Although Charley testified that he provided the affidavit to Jordan 9-11 months after he got incarcerated in which he believed to be before Jordan's trial (R. 150; 150;8), it is clear that Charley memory is off, ten months after his incarceration is actually *after* Jordan's trial. Furthermore, the evidence establishes it was provided after the trial (App 44). This is also consistent with the detectives' testimony (R. 152; 5).

B. Jordan Was Not Negligent In Seeking This Evidence

Jordan was not aware of the fact that Quincy admitted to committing these crimes to Lonnie Davis and had not Davis voluntary came forth with the assistance from the assailant, Quincy with such vital evidence Jordan would not have been in possession of this newly discovered evidence(R.147;26-28). Jordan had been trying to obtain a statement from Mr. Hohnstein, Deyon Lee and Charley but was not able to get into contact with these men prior to his conviction through trial counsel (R.152; 20-25). Jordan has been a pro se litigant since his conviction and there was no way for him to act as his own private investigator due to his incarceration and was trying to get new counsel. However, due to their incarceration Jordan was able to contact them through mail (Id)

C. Newly Discovered Evidence Is Material to the Issue of Jordan's Guilt and Innocence.

There is a very strong probability that someone other than Jordan participated in this shootings which caused the death of the victim. The affidavits of Hohnstein, Charley, Lee, Davis and Quincy corroborate each other that Jordan was not in involved in this case. This evidence clearly is material to the case since it was critical to the States case that Jordan was the shooter. ***Washington*** 219 F.3d at 634).Jordan maintains his innocence though out trial (R.75; 58; 59).

D. The newly discovered is not merely cumulative to the evidence presented at trial.

The newly discovered evidence is based on the affidavits of Quincy who confessed to doing the shooting in which Mr. Jordan is serving for. Quincy revealed details to Lonnie Davis prior to submitting his sworn affidavit (App30 bottom right). Charley's, Lee's and Hohnstein's testimony are consistent with this. Evidence in not cumulative unless it support a fact established by existing evidence. ***Washington***, 219 F.3d 620, 634. Reasonable probability will be argued in section (***VI***)

V JORDAN WAS DENIED FUNDAMENTAL FAIR PROCEEDING WHEN FORCED APPOINTED COUNSEL AT EVIDENTIARY HEARING FAILED TO BE EFFECTIVE ASSISTANCE. JORDAN IS ENTITLED TO RELIEF FROM THE ORDER DENYING HIS MOTION FOR POSTCONVICTION RELIEF

Although, Jordan don't have a constitutional right to counsel on collateral attach ***Coleman V Thompson*** 501 US 772, This by no way mean that the criminal appellant is constitutionally defenseless ***Tamalini V Stewart*** 249 f3d 895, 901, (2001). Therefore any error that may led to a default on collateral attack on behalf of appointed counsel cannot constitute cause to excuse the default unless that error is an independent constitutional violation such as ineffectiveness of counsel prevented review of claims that could only be fully and fairly litigated for the first time at a collateral proceeding, ***Coleman*** 501 US at 755-56,773-75..

However, if counsel is forced on a prisoner and counsel abandoned preserved issues, such defaults could not be reasonably attributed to the prisoner ***Holland Vs Florida*** 130 S. CT 2549 at 2564 and 2568. Furthermore, federal courts have held

that the right to counsel attaches when an evidentiary hearing is granted ***Graham V Portuondo*** 506 f3d 105, at 107-108(2007). This is because a pro se petitioner cannot adequately prove harm without the aid of counsel at an evidentiary hearing ***US V, Vesquez*** 7 f3d 81 at 85 5th 1993 ***Rauter V. U S*** 71 f2d 693, ***State V Peterson*** 2008 WI App 140, at ¶12 757 N.W 2d 834 (2008), *Also see;* ***State V Machner***, 92 NW 2d 797 at 804 (1979). The same ***Strickland*** standard for ineffectiveness applies, with appropriate modification to assess the constitutional effectiveness of post conviction or appellate counsel, ***State v. Ziebart,*** 2003 WI App 258. ***Mason vs. Hank,*** 97 F.3d 893. Both deficient performances and resulting prejudice are reviewed de novo, See ***State V Cummings***, 199 Wis. 2d 721, 747-48 (1996).

Specifically, After Jordan filing a Notice of Appeal, the Seventh Circuit Court issued a certificate of Appealablilty on February 11, 2008 and appointed counsel to address whether trial counsel rendered ineffective assistance in failing to interview two witnesses and along with any other issues "identified by counsel" (emphasis added) (App.25 part B). Attorney Hart was appointed to represent Jordan on February 17th, 2010 as a *guardian ad Litem or counsel Nunc pro Tunc* (R.105) since Jordan was deemed to be incompetent to represent his self (148; 6-12) Immediately upon being appointed as counsel in this case Jordan explained to attorney Hart the reasons why previous counsel was requested to withdraw (Christina D. Hernandez-Malaby and Jodi Janecek) (App43 -Aff, ¶3) and see (R. 112, 113, 114, 115). Essentially attorney Hart refused to preserve the issues raised

in Jordan's 974.06 (R. 84, 90), amend and develop material facts relevant to those issues which internally denied Jordan fundamental fair chance to put forth evidence of his innocence.

Postconviction Counsel's Performance was Deficient when They Failed to Effectively Introduce Material Evidence of the following;

A Attorney Richard Hart was made aware of Attorney Christina D. Hernandez-Malaby failure to cross examine Quincy and introduce "other acts evidence" that Quincy fired a gun at a police to corroborate Quincy's statement against penal interest. Attorney Hernandez-Malaby also failed to cross examine Quincy and introduce evidence that Quincy is currently serving an 11 year sentence to corroborate Quincy's statement against penal interest by showing Quincy admission to the crimes subjects him to 175 years if he's convicted of the crimes. Postconviction counsel's failure to cross-examine and introduce the aforementioned evidence was therefore deficient performance.

Attorney Hart was made aware of this but refused to request a recall. Evidence need only be relevant to be admissible, (see ***City of West bend v. Wilkins***, 2005 WI App 36, ¶14), and that such evidence need *not* tend to prove a fact in a substantial way ***State v. Danny***, 120 Wis. 2d 614, 623 (1984). Furthermore, due to Quincy being unavailable, it was also unreasonable for Hart to refuse to call the notary to testify to Quincy's state of mind and intent at Jordan requested (152; 42). See; (App 43 ¶ 4)

B Hart refused to establish the record with the fact that Jordan was not aware of the fact that Mr. Quincy admitted

to committing these crimes to Mr. Lonnie Davis nor Charley, and had not Mr. Lonnie Davis voluntarily came forth with the assistance from the assailant, Quincy (R.147; 26-28) with such vital evidence, Jordan would not have been in possession of this newly discovered evidence, since Charley was covering for Quincy. At the time of Jordan's trial Quincy, Charley, and Lee were on the street while Jordan was housed at Green Bay Correctional. Quincy's admissions to Davis had not existed (App 43-Aff¶ 10). Attorney Hart failed to get these relevant facts on the record.

C Hart failed to impeach Hohnstein about his pending case, prior convictions, threats, harassment, and about being paid to testify against Jordan. See; (App 43¶5). Jordan made Hart aware of this, months before Hohnstein testified (R.150; 44). This was clearly unreasonable in light of the fact that Hart stipulated all the witnesses' priors except Hohnstein's. Furthermore, on the day Hohnstein was to testify Hart showed Jordan some discovery of Hohnstein's new pending case and refused to forward the discovery (App43, ¶ 5). This was unreasonable, ***State v. Jeannie M.P.***, 286 Wis.2d 721, ¶25 (Ct. App. 2005)

D Hart refused to let Deyon Lee identify the assailant who he knew as Quincy before and or at the hearing and supplement or point out that Bohach signed a stipulation waiving the state burden of proof regarding calls made from Lee's phone that allegedly linked Jordan to the homicide without his

consent, the State's objections to these facts was erroneous. (152; 16-17, 26-27) compare with (R.148; 22, 55-56, 59) Mr. Lee obviously challenged the State's case and reports summarized by the detectives. Lee repeatedly attested why he refused to cooperate with the detective (R.151; 18) (App 43-¶ 7).

E Hart unreasonably refused to cross examine Charley and introduce relevant evidence of Charley being bias against Jordan for Quincy. Prior to Charley's testimony, Jordan explained to Hart how Charley was not cooperative with him for (6 years) and that Quincy's name isn't even in Charley's affidavit nor did Charley tell Jordan about Quincy's involvement (App43-aff ¶6). In light of these facts and Charley's letter stating Quincy is like a brother (App32-33) such failures were unreasonable. See ***State v. Hoover***, 2003 WI App 117, ¶6.

Nevertheless, Hart also refused to submit and develop the record with the police report with Charley's name, addresses, and numbers provided by Kolett Walker to the detectives, this police report proved Bohach was aware of Charley (R.65; 4-8),(app 34. Rather, Hart conceded to the Circuit Court's ruling that was contrary to the record (App 8-10), but see; (R.65; 5-6}, then refuse to let Kolett Walker clarify that Bohach never spoke to her at all (App43-¶6). In fact *when the state objected* to Jordan testifying as to how Charley could have been contacted (from police report by Kolett Walker) Hart stated:

"I'm just --- on a general basis what the relationship was, your honor, I'm not sure that Miss Walker has direct information, but it shows the pattern between the two parties, my client and his attorney". (R.152; 12).

Obviously, Hart abandoned Jordan's cause since Hart had the documents in front of him (App 31bottom-right). In fact, nothing in Hart post- conviction motion for a new trial (R.120, 122) or oral arguments (App 4-10) attacks any of the State's pillars that convicted Jordan while demonstrating why Jordan's new evidence would create a reasonable doubt for a new jury.

Rather, over a year of being appointed, Hart stated at oral arguments:

> *"I think what's important here ... Mr. Molitor's submission, I think, was helpful to everyone because I didn't know many of the facts in this case and it gave me more of a background". (App 7).*

The problem with this is that the State submitted its {submissions} two weeks before oral arguments. The following week Hart submitted a reply brief which was a two page letter (R. 122). Jordan points out to this Court that the State submission was "25 days" *late,* 79 pages long and two weeks befor oral arguments (R.121). Furthermore, Hart didn't even have all the post-conviction transcripts (R.136).

In light of this Jordan requested Hart to file an extension not only because the facts and standard of law were incorrect but also it was clearly leaving Jordan at a disadvantage to fairly plead his case. However, Hart declined to request an extension and stated he went over everything and submitted a brief to correct those misleading facts (App4-7) (App43 ¶ 2). However, no corrections were made (App.4-10) he refused to file a motion for reconsideration, and hampered Jordan ability to file one by withholding the Circuit Court final order and Jordan legal materials *See* ***Smith v. Ohio Dep't***

of Rehab. & Corr., 463 F.3d 426, 433-34 (6th Cir. 2006) ***Dist. Attorney's Office for the Third Judicial Dist. v. Boyle*** 2012 WI 54 ¶5 (App 43 ¶ 2). Under these circumstances Hart was in no position to fairly serve his purpose at the hearing ***Graham V Portuondo*** 506 f3d 105, ¶6 (2007).

Thus, failing to Argue, correct, and guide the Court of Bohach's deficiencies (App14-16), Hart even incorrectly stated it was Jordan's position that Blake was the shooter in this case (App 7), In fact, Hart made no attempt to rebut the prosecutor's erroneous objection to Jordan's testimony regarding trial attorney's preparation for trial (152; 7). This was excluded due to Hart's failure to guide the Court to the record where Bohach did in fact have a chance to rebut Jordan's claims. (R.148; 14-22, 36, 41).

F. As a result of Hart's failure to question Jordan about the defense and guide the Court of *Jordan's only defense left* was (to present evidence that Jordan and Blake are right handed). The defense was founded on the victim's statement that Blake fired a "*Black Hand gun* out his window with *his right hand*" (R.72; 84) however, Bohach had no ideal that Blake wasn't going to testify and that the victim was going to deny the statement they gave to the detective since he didn't question them before trial (that Blake fired a "*Black Hand gun* out the driver window with ***his right hand.***" (R.72; 84)). Yet, Bohach still made the closing argument but failed to present the evidence of Jordan being right handed when he testified. This

resulted in the jury requesting the evidence Bohach commented on *(whether Jordan was left, right or even handed)* in which the circuit court denied. (App 43-¶ 11) under the circumstances Hart acted unreasonable. Hart unreasonably failed to supplement Jordan's motion with trial counsel failure to question State Witnesses' before they testified. (App 43 ¶ 13)

G Hart unreasonably failed to guide the Circuit Court to the fact that the private investigator's (Cindy Papka) P.I. notes are not lost (R.148; 30). In fact, Hart refused to even submit the billing sheet which shows all the witnesses Cindy Papka questioned and even refused to call her to testify (App 43 ¶12). Any reasonable attorney would have called her in light of Bohach testimony that: **a)** he had notes in his files that weren't his hand writing (R.148; 32); **b)** That he couldn't recall if he gave the private investigator the witnesses name or all the police reports (R.148; 38); **c)** That the billing sheet has parts-handwriting that no one can understand "ATT MTG;" **d)** furthermore, the miles she traveled and the price needed some clarification[6]; and **e)** lastly, this billing sheet reflect s that she was hired ***two weeks before trial***, and two weeks *after* counsel told the trial court that he had enough information to hire a private investigator (R.64; 7-8), (App 28, bottom right hand corner).

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[6] The private investigator billing sheet indicates that Bohach was charged $20 per-hour, and 0.32 cent per-mile. The total was $257.84 cent, and $27.84 cent which was due to. 31miles from contact with Attorney Bohach; 46miles was due to attempting to contact Jason Hohnstein. However, there is no Deyon Lee, , Regina Young, Kolett Walker, Terrell Norwood, Charley body, Charley Grant, nor Gregory Robinson name on the private investigator's report, and Jordan points out there are no state witnesses on this list (App 28, right hand corner)

Rather, attorney Hart made vague arguments and conceded to the State's rendition of facts and standards of law that are not supported by the record (App 4) which was adopted by the Circuit Court (App 14-24). Given the established principle that allegations not refuted are deemed admitted, ***State v. Clark***, 179 Wis. 2d 484, 492 (1993) ***Holland, supra.*** These actions were unreasonable.

Therefore, forced appointed counsel Richard Hart, abandonment and failure (s) to adequately raise Jordan's preserved claims, may have resulted in a reversal of the conviction, or order of a new trial, ***Mason v. Hank,*** 97 F.3d 887 (1996). Due to these above errors, Jordan was denied a meaningful opportunity to be heard and a fundamental fair preceding that would result in a miscarriage of justice if Jordan conviction is up held ***Upton*** 130 S. Ct. 2217 . Prejudice will be further argued in section **(VI.)**

VI. THE CUMULATIVE EFFECT OF COUNSEL(S) ERRORS AND THE NEWLY DISCOVERED EVIDENCE CREATES A REASONABLE PROBABILITY OF A DIFFERENT RESULT AND ENTITLES JORDAN TO RELIEF IN THE INTEREST OF JUSTICE.

Contrary to the Circuit Court's assessment (App 14-23), the combined effect of the errors and new evidence create far more than a reasonable probability of a different result, when following the criteria as set forth in ***State v. Edmund***, 2008 WI App. 33 ¶17. Indeed, they create a very real probability that an innocent man stands convicted and sentenced to 36 years in

prison. Had Jordan been allowed to represent himself or a reasonable attorney in Hart's position would have pointed out and supplemented the above and the following;

That the only alleged evidence pointing to Jordan is a statement which Jordan testified that he did not make and only signed because he was hoaxed into doing so because he could barley read (R. 75; 56). And Michael Blake Jones' *girlfriend,* Tashawnda Washington who claimed Jordan was the shooter. (R.73; 15-64).

However, the victims identified Blake as the shooter (R.72; 13, 52, 84).Therefore, the central issues at Jordan's trial were whether he was in fact the shooter and if he really was hoaxed into signing a confession. A reasonable attorney in Hart's position would have supplemented Jordan's 974.06 motions and/or pointed out that this *supposed admission* is now countered with newly presented evidence that Bohach failed to present (App30 bottom right). It's one thing for a detective to say that Jordan read the statement before signing (R.67;15), but then clean it up seeing what Bohach line of question was leading to, stating; "it was read to him" or "He read along." (R. 67; 21-21). But it is much more powerful to assert *consistently* that Jordan read it word for word with understanding. Hart refused to supplement and or point out to the obvious failure that Bohach made during pre-trial and trial proceedings that were fatal to the central issue of the case... credibility!(75; 58).

What *is even more powerful* that Hart also refuse to point out and or supplement is that Jordan, at the time of his arrest,

was 19 years old with a second grade reading level at the time of his arrest (learning disability) (App30 bottom right). The document which Jordan signed is written in very poor cursive by the detective who admits this, speaks volumes in light of Jordan's school record (R.67; 21-22, app 29-30). Jordan points out this not only substantially serves to impeach and undermines the detectives', State's excessive testimony (R. 72; 55-68, 256-61, 214-215, 225-235, (R.72; 55-68) but it also serve as a defense of affirmative evidence of Jordan's innocence, ***Danny, supra.***

However, the *supposed admission* is not conclusive of guilt. ***Crane v. Kentucky***, 476 U.S. 683, 689 (1986). Indeed, psychological research has shown that the commonly held belief that innocent people will not confess to a crime is countered by evidence establishing that police induced false confessions are substantial causes of erroneous convictions. ***Jacqueline McMurtrie, The Role of Social Science in Preventing Wrongful Convictions***, 42 Am. Crim. L. Rev., 1271, 1280 (2005).

Moreover, while a jury could believe the detective that Jordan admitted his involvement, there is ample reason not to. Obviously, the state did not believe that Jordan *supposed admission* was sufficient to guarantee a conviction on its own, given his perceived need to give substantial concessions for the detective's testimony (Id); a jury can reach the same conclusion. ***Kyles v. Whitley***, 514 U.S. 419, 448 (1995) ("if police officer thought so, a juror would too").

Essentially, the jurors did, they asked for more evidence that was favorable to Jordan (App35-36). This undercuts the State's *Jordan's evidence doesn't make sense*" or "*strong evidence*" theory, despite Bohach Failures ***Leibach***, 347 F.3d at 256 FN 16. ***Wiggins***, 539 U.S. at 527. The state internally concedes to this when it spoke of its own evidence;

"This is the real world. This is the way things are. Things don't line up perfectly." (R. 75; 60-61).

However, Jordan's witnesses demonstrated that at Jordan's request, a reasonable attorney would have pointed out the things that made sense and gotten some photo arrays for Lee to identify to verify his story. (R.151: 15-30) obviously there was confusion by the detective's methods of questioning (R.151: 19, line 17-25). The victim also got confused about the same common name, *Michael Blake Jones,* (R.72; 80) ***Bank of Illinois v. Allied Signal Safety Restraint Systems***, 75 F.3d 1162, 1171-1172 (CA7 1996).Therefore, the failure to have Lee try to identify the assailant before and or in open court was unreasonable. The facts that: **1)** Lee's phone record and name came up as a party to the homicide in an *independent* police report (App 38); **2)** Lee, being an associate of Blake, Jordan, and Charley, puts Lee in a superiority position to know relevant information (R.151;18, 21, 26-27, R.151; 6).Therefore; Lee's making calls to Blake prior to the shooting *from his phone* not only substantially undermines the State's excessive testimony and closing arguments as a pillar for its case about the phone calls (R.75; 12-24, 215-218, R; 74; 77-78), but additionally, Lee knew

Blake took money from Jordan early in the day of 6-22-02 because he also done so himself (R.151; 6).

Most of all, Lee getting threats from Quincy friends not to testify, combined with the fact that Lee saw Quincy and Blake right after the shooting with two other individuals (R.151; 15) makes it clear that Lee's testimony is affirmative evidence of Jordan innocence, A reasonable probability ***¶Edmund 17.*** This relevant evidence was excluded due to Hart failure to guide the court of Bohach failures. ***Danny***, 120 Wis. 2d at 623.

However, Hart refused to guide the lower courts that Bohach's failure to contact Lee wasn't just a simple mistake. Bohach signed a stipulation waiving the State's burden of proof that Jordan made phone call from Lee's cell phone that connecting him to the homicide without Jordan's consent) (App 28, 39, 43¶ 7). Jordan tried to testify to the relation of facts but Jordan was restricted due to the State erroneous objection (152; 16-17, 26-27) when in fact the State did have its chance to cross-examine Bohach on the matter (R.148; 22, 59). ***Danny***, 120 Wis. 2d at 623. Rather, Hart conceded to the state objection (R.152; 16-17, 26-27).

It was the same abandonment for the facts surrounding charley, See {Page 35-36, *section "E" of this brief*} clearly Harts failure(S) undermined the courts analytical decision in regards to Bohach (***Id***). Given the established principle that allegations not refuted are deemed admitted, ***Clark***, 179 Wis. 2d at 492, attorney Hart's unreasonably failed to adequately raise Jordan's preserved claims may have resulted in a reversal of the

conviction ***Mason*** 97 F.3d 887, 893) also ***Thiel,*** 2003 WI 111, ¶¶ 59-60.(appellant brief 12-20) ***Alvarez*** 225 F3d 820, 824 (2000),(cumulative effect controls here.)

Charley, although he doesn't recall seeing Quincy with Blake at the gas station (R. 150:7), On two occasions Quincy related that he was in the back seat of the car with Blake and did the shooting that night (R. 150:12) (App 32-22). Quincy thought Charley was acting funny that night of the shooting because Charley didn't acknowledge him ***Id. Jeannie M.P.***, 286 Wis.2d 721, ¶25 However, Charley admits that he didn't want to relate this information to Jordan (R. 150:8, 15) and has been uncooperative from day one (R. 152; 27-8, 30). In fact, Quincy's name isn't even in Charley's statement (R.150; 15). Apparently Charley is having a problem with his memory (App 31) and/or is biased against Jordan for Quincy (App 32-33) ***Hoover***, 2003 WI App 117 at ¶6. Quincy is like a brother to Charley (App 32-33),

Furthermore, Charley's statement was prepared over 7 years ago. Inconsistency and gaps are to be expected. See ***United States ex rel. Hampton v. Leibach***, 347 F.3d 219, 254 (quoting ***Brice v. Nkaru***, 220 F.3d 233, 240). Moreover, despite the inconsistencies Charley stands by his statement he made in 2003 (R.150; 29-30) that was not notarized until 2009, ***Jordan v People***, 151 Colo 133, 139 (1962); accordance, ***State v. Jenkins***, 168 Wis. 2d 175, 195 (Ct. App. 1992). Charley has been consistent about Jordan innocence. (R.150; 7) (App32-33), Creates a more reasonable probability, not less ***Danny, supra.*** Therefore, Charley's does not merely undermine the credibility

of the State's case. ***Vogel***, 96 Wis. 2d at 388-84 (*Prior inconsistent statements are admissible for its truth not merely as impeachment*).The jury is entitled to hear, and believe some, all or none his testimony ***State v Penister*** 74 Wis. 2d 94, 103.

The facts Davis relates, falls in line.Davis refusing to give Jordan a statement until Quincy assured him of the seriousness of coming clean and showed the contents to Quincy before he swore to it make the determination more probable ***Danny***, ***supra*** (R.147; 26, 34-35, 37). Davis sworn to that Humbolt and Keefe Street, June of 2002 to be were Quincy murdered someone(App 30 bottom left).Quincy's sworn these material fact in details (App29 left ¶ 6-7). Quincy stated that on June 22nd 2002 he and Blake both had 45 calibers and they both stuck their guns out the window but he was the only one who shot ***Id.*** This answers the question why two of the victims initially identified Blake as the shooter (R. 73; 52 84). And the 3rd victim stated he saw the driver or the person behind the driver fires the shots and that there were four black males in the car (R.73; 13-15). Quincy's statement corroborates this material fact. Quincy was seated behind the driver when he fired into the victim's vehicle (App 29, left side, ¶3, 8). These fact Quincy swore to exposing him to criminal liability (175 years) admissions, against his own interest makes is more credible, not less, cf, **Wis. Stat. 908. 045** ***State V Guerard*** *2004 WI 85 ¶42,* Quincy pass assaults with fire arms and shooting at police officers is consistent behavior (App 41), while Jordan was no priors with fire arms. However, due to Quincy being unavailable

to testify, Hart unreasonably abandoned calling the notary to testify to demonstrate Quincy's state of mind and intent. These above facts are relevant. ***Danny***, 120 Wis. 2d at 623 (R.152; 42) See; (App 43 ¶ 4)

Furthermore; at the time Quincy swore to the murder, he was pursuing an appeal for his conviction (App 41). Jordan received Quincy's statement while he was in Wisconsin Secure Program Facility segregation (App 43¶ 10). In light of this, Quincy's confessions(S) are more probable and properly placed (R.145; 14-41).***Danny***, 120 Wis. 2d at 623.

Unlike Hohnstein, who the State tries to base its reasons, the testimony of Quincy, Charley, Lee, and Davis was internally consistent and has nothing to gain by telling what they knew. In fact, these men had a lot to lose. After all, a police officer is no more entitled to be believed than any other witness, See e.g. ***United States v. Carson***, 560 F.3d 566 (CA6 2009) (police officer convicted, inter alia, of perjury); ***United States v. Ronda***, 455 F.3d 1273 (CA11 2006) Furthermore, although the defense witnesses had prior conviction, so did the State witnesses (R.73; 43,) (App 30, top right). A reasonable attorney would have questioned Jason Hohnstein about his prior convictions (App30 top right). The interesting one is that Jason Hohnstein did time in prison for strong arming someone for money while in a desperate need for some cash (App43 ¶5). Ironically, Hohnstein caught a new charge for defrauding the State out of thousands of dollars prior to

his testimony (App 43 ¶5). Yet Hohnstein came to court a free man (R. 150; 42-50) (app 43 ¶5).

Moreover, Hohnstein was getting paid to come to court on behalf of the State in this case (*Id*). What's even more interesting is that both attorneys knew of this material evidence but refused to develop the record on these facts even though they stipulated everyone's prior convictions, except Hohnstein's (*Id*).

Clearly this material evidence was intentionally excluded by both attorneys (R. 150: 32-41). Although these errors by counsel were out of Jordan's control ***Holland, supra*** and must be imputed to the State, ***Murray v. Carrier***, 477 U.S. 478 (1986), the State did forward some discovery to counsel on Hohnstein the day he testified. Nonetheless, Hart refused to forward this to Jordan and question Hohnstein on the above and about the threats Hohnstein was getting from his mother and the State (App43 ¶5). Such failures were unreasonable. ***State v. Jeannie M.P.***, 286 Wis.2d 721, ¶25 (Ct. App. 2005), see *also* ***Hoover***, 2003 WI 117, ¶6.

Under these circumstances Hohnstein's admissions that Jordan is innocent in his affidavit do not merely undermine the credibility of his post conviction testimony; they are affirmative evidence of Jordan's innocence. See ***Vogel v. State***, 96 Wis 2d 372, 383-84 (prior inconsistent statement is admissible for its truth, not merely for its impeachment) Similarly, a reasonable jury could conclude, given the evidence that Hohnstein at the time when he was under no pressure from

the prosecution, that he gave an accurate statement of him being present at the gas station prior to the shooting. See {APP 43 ¶ 5} ***Danny***, 120 Wis. 2d at 623.

However, contrary to the State and Circuit Court (App16), nothing is contrived about the witnesses' testimony. The Circuit Court's assessment is misplaced, because the car identified in the affidavits was a car that was driven and seen by the witnesses on regular. If *contrivance* was the case, there would be no inconsistencies.[7] The fact is, the State's witnesses, after making statements expounding on their statements/testimony only after talking to detective Hein (App46) and the victims only start to assume that Blake is the shooter after talking to Hein but before testifying (R.75; 53, 85). One can easily argue that the evidence the State used to convict Jordan was contrived, especially in light of the fact that the alleged confession was written by detective Hein. After 50 hours of questioning they became desperate because all the credible evidence pointed to Blake.

In fact, the victim identified Blake as the shooter three different times (R. 75; 45, 50, 51). But after talking to this same detective their testimony changed to: "I assumed Blake was

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[7] In fact, for example, Lee told the detectives he knew they were coming (App 40) but he gave an inconsistent statement intentionally due to the threats he was receiving from Quincy's friends. (R.151; 18-24). And Quincy's name isn't even in Deyon Lee's affidavit. (R151; 4-30). Lee felt safe to testify once he moved to another facility, which is a workless facility (R.151; 30) creates a reasonable probability ***Edmund*** ¶17 ***supra.***

the shooter", "Why would a person shoot across the driver" (R.72; 50). A reasonable question can be presented to any tribunal: "*where did the victims get this specific information to pose a question of this nature?*" Then when asked if the detective told him what to say, he responded, "*Yeah on something's*" *(Id;* 54, 56*).* What could have also been pointed out is the D.A.'s reaction to this witness's response, practically yelling; "*What did I tell you, to testify to?*" (Id; 57). The victim was told not to lie. The problem with this is the victim was fully cooperative, why tell him to tell the truth? The victim gave a detailed description of the incident stating, "*Blake shot with right hand, black hand gun, and window half way down.*" (Id; 46, 84) the State still continued to use contrived methods to maintain a conviction of a man innocent.[8] Again, the defects the State tries to point out about Jordan new evidence that he think doesn't make sense or incredible can easily be said about the state case which he internally conceded; "*This is the real world, this is the way things are. Things don't line up perfectly.*" (R. 75; 60-61). ***Lee v. McCaughtry***, 933 F.2d 536.

See, ***Lee v. McCaughtry***, 933 F.2d 536, also see ***Gomez v. Greer***, 896 F.2d 252 (7th circuit 1990)

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[8] Also hart refused to file for a motion in camera inspection of detectives James Hitchinson and Jeriamiah Jacks. I pointed out that they have been threatening witness and if they were seeking the truth they would have used the cameras they used on Quincy. The interview with Lonnie Davis was a few minuets after Quincy so they still had the camera. And if they were not seeking the witnesses as suspects of a crime as Hitchinson attested to (R.152; 50) then why not use the camera that's at your finger tips? All the witnesses denounced most of the report attribute to them. The detective further stated they didn't have probable cause to assume no one was lieing or committed a crime which was the detective justification for not using the recorder. But he questioned Jason Hohnstein (the State stare "paid for witness,") who has similar affidavits as Charley and Quincy first. There behaviors would come into question in the mind of a reasonable jury. Why not use the camera to prevent any misunderstanding??? *The Role Of Social Science* 42 Am. Crim. L. Rev, 1271, 1280 (2005)

Therefore, the State's suggestion that Jordan's evidence only serves to impeach the credibility of the State witnesses who testified at trial is insufficient to warrant a new trial fails. The United States Supreme Court has long rejected this legal fallacy. See ***United States v. Bagley***, 473 U.S. 667 (1985) Contrary to the Circuit Court's adopted assessment, and the State's erroneous standard and facts (App10-25), it is obvious that attorney Bohach's failures to adequately prepare for trial, question witnesses, and present a complete defense on Jordan's behalf resulted in a "verdict or conclusion only weakly supported by the record [which] is more likely to have been affected by errors than one with overwhelming record support." ***Strickland***, 466 U.S. at 696.

With in mind, *despite Bohach failures* the State's didn't believe that Jordan's *supposed admission* obviously wasn't sufficient to guarantee a conviction on its own. Essentially the jurors did, they asked for favorable evidence that Bohach failed to submit (App 35-36). This requests under cuts the notion that the case against the defendant was overwhelming in all respects, ***Leibach***, 347 F3d 219, 256 FN 16. The evidence that Jordan is right handed was in the police reports (app 30, 37 left corners), yet, Bohach failed to present it and secure the witnesses testimony that the defense was founded[9]. Due to Hart

[9] Trial counsel not only failed to subpoena key witnesses to support any of those available defenses for Jordan, but he also failed to interview alleged eye witnesses who were intertwined with this particular defense. This essentially left Jordan defenseless. For, the victims gave statements that *Blake* fired a "*Black Hand gun* out his window with *his right hand*" (R.72; 84) (emphasis added). Yet, attorney Bohach refused to question witness he went on a

refusal to guide the lower court, he ruled this to be strategic on Bohach behalf, this was erroneous, ***Roe*** 528 US 470 (2000). (Question is whether trial counsel's actions were reasonable), (Page #9 of brief)

A pretrial and or pre-hearing investigation is so fundamental that the failure to conduct a reasonable investigation may in it self amount to reversal of conviction itself ***Lambert***, 388 F.3d 1056, 1063, (CA7 2007) ***Tucker***, 716 F.2d 576, 583 n. 16 ***Lentowski*** 212 WI 716. Therefore, it appears that Jordan <u>had a right without a remedy</u> ***Collins V Eli Lilly*** co 166 wis 2d 166 (1984)[10]. Although, the constitution does not entitle State litigants to the exact remedy they desire, they are entitled to their day in court. ***Wiener V. J C Penny Co*** 65 Wis 2d 139. Essentially, forced appointed counsel, Richard Hart, severed and ceased agent-principal relationship, the injustice is clear. ***State V Klessig*** 564 NW 2d 716 ¶37.When a court afford these protections they must comport with due process, see ***Evitts*** 469 US387, 393, ***Skinner v Switzer***, 131 S .ct 1289, 1302, (2011) [11].

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fishing expedition, (R.72; 80) See ***Leibach***, **347 F.3d 219 at 236** *Id.*, at 251, citing ***Bryant v. Scott***, **28 F.3d 1411, 1415.**

[10] According to Article 1, (section 21) of the Wisconsin constitution give every Suitor an absolute right to self representation ***Hlavinka V Blunt, Ellis and Loewi, Inc.*** 174 Wis 2d 381 (Ct App 1993) Jordan has a right to self representation and to be heard by him self or through counsel but was erroneously found incompetent and was appointed counsel who hampered that right, yet no case law exist to remedy the injury counsel caused.

[11] Here, Jordan was not allowed to "present his case in his own way" yet he is expected to suffer from the ineffective presentation of forced appointed counsel -that he did not agree with- and that was otherwise not his. "Some basic rights can never be treated as harmless error", ***Harbin,*** supra, at 542, and this is one of those rights. "The 14th amendment bars a state from denying any person a fundamentally fair

In conclusion; For the reasons set forth herein Jordan respectfully asks this Court to reverse the order denying his 974.06 motion, vacate the judgment of conviction, and remand with direction to the Circuit Court that it enter an order for a new trial and/or appoint new counsel (with specific findings with respect to the 7th Circuit order that appointed counsel address all identified errors on behalf of trial counsel, (App25, part a), given that forced appointed counsel refused to (Appellant brief #12-20, 36-49). ***Peterson*** 2008 WI App 140, at ¶12 757 N.W 2d 834 (2008), and hampering what is likely Jordan's single opportunity to challenge the lawfulness of his imprisonment. Thus, denying Jordan a full and fair evidentiary hearing, ***Upton*** 130 S C.T 2217 at 2223 and ***Lambert*** 388 F.3d 1035 at 1061 brief (app 1-24).

Furthermore, Due to the Trial Court's and Circuit Court's discussion in the hearings that Jordan is unfit to represent his self (R.69; 12-76, R.148; 3-14), one would be hard pressed to presume any intentional relinquishment of any known right. The errors committed were beyond Jordan's control and shouldn't be attributed to him ***Holland*** 130 S. ct 2549, 2567-8. *A new trial in the interest of justice is required here since an apparent miscarriage of justice has occurred* ***State v. Ruiz***, *347 N.W. 2d 352 (1984)* ***State V. Kittilstad*** *742 N.W 2d 75 (2007).*

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proceeding. The due process clause of the federal constitution thus prohibits the state from placing undue restrictions upon a prisoner's meaningful opportunity to be heard." ***Piper*** supra, ***at*** 658 also sees ***Penterman V. Wis Elec. Power Co*** 211 wis 2d 458, 474

committed were beyond Jordan's control and shouldn't be attributed to him *Holland* 130 S. ct 2549, 2567-8.

A new trial in the interest of justice is required here since an apparent miscarriage of justice has occurred *State v. Ruiz*, 347 N.W. 2d 352 (1984) *State V. Kittilstad* 742 N.W 2d 75 (2007).

Dated at Boscobel, Wisconsin this 2nd, day of October, 2012

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Jordan does believe that oral argument is necessary even though the briefs fully represent the issues and legal authorities on this appeal. However, publication of the opinion is warranted to emphasize the law as it relates to credibility determinations made by the court when it comes to defense witnesses and evidentiary hearings on post-conviction motions

CERTIFICATION

I hereby certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that 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.

I further certify that if the record is a required by law to be confidential, the portions of the 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.

Lastly, I certify that this brief conform with the rules 809.19 (8) (b) and (c) for a brief produced with Monospaced font. This font is Lucida console-12.

Dated at Boscobel, Wisconsin this 2nd, day of October, 2012

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