STATE OF WISCONSIN DISTRICT ONE COURT OF APPEALS

State Of Wisconsin, Plaintiff,	)	Circuit No. 02-Fc-4131
vs.	)	Appeal No. 2011AP001249
Joseph Jordan, Defendant	)	

Appeal from the final order entered in the Circuit Court for Milwaukee County, Honorable Jeffery Conan Circuit Judge presiding

Reply brief of Defendant- Appellant,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATE OF WISCONSIN DISTRICT ONE COURT OF APPEALS

State Of Wisconsin, Plaintiff, vs. Joseph Jordan, Defendant-appellant	Circuit No.: 02-cf-4131
	Appeal No. 2011AP001249
	Motion: Reply brief

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

The state tries to label Jordan's arguments to its benefit rather then address them as they are, (Respondents brief at 20,23,and 24) Jordan coherently addresses the circuit court statement-ruling with facts and the standard law that governs those "*statement-rulings*" whether under newly discovered evidence or ineffective assistance of counsel, 3-10.

However, It also becomes logical that the statements the circuit court did make were "*concerns*" he was having that he needed clarified by Hart, in which went un-clarified. Therefore, those statements that went uncorrected influenced his ruling. (Jordan brief at3-10) For example as the circuit court explains;

> To be real honest, take the three of us, the three lawyers, all have legal degrees, go outside, take a look at a car, come back, and two weeks later have us all describe what the car is. And my guess is that you have three different descriptions. "

(Jordan's brief, app16-18)

Jordan asks this court a simple question, does this ruling by the circuit court implies facts in this case to be that these witnesses had a spur of the moment "*I got a glimpse at the cars*"??? The answer should be is, "*yes*"! These are not facts of the case, (Jordan appellate brief 4-5) surprisingly; the state even conceded that Bohach new about Charley even thought the A.D.A and the circuit court refused to acknowledge it (*Respondents brief at 21*) [1] this also affected his ruling.

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

The state seem to imply that due to Jordan lack of education, that Jordan was unable to know and argue the facts of his case better then the forced appointed counsel(respondent brief 35-40)

This court has even ruled Jordan able to represent himself, and that the issues in this case were not that complex. Even so, appeal process is twice as harder then a limited hearing, even trial proceedings, depending on who you ask. Contrary to the one empirical study has shown that pro se defendants achieve acquittal rates equivalent or higher then those defendant with attorneys, 80 percent of the defendants surveyed that did not show any mental illness, dispelling the notion that anyone who chooses to go pro se is some how

[1] The respondent also denounces the "*identical descriptions*" regarding the ruling made by the circuit court and used the description of the parts of the affidavits as *"nearly identical."* (respondent brief at 16) However, despite the states spin the record reflects (***Id*** 14-34) the circuit court had little ideal of the facts of this case, and instead simply counter sign an order that contains unsupported factual findings (Jordan appellate brief 4-9). The tenuous legal conclusions drafted by the state prosecutors seeking to invoke every possible legal ground for rejecting the appellant claims by The United States Supreme Court have criticized this practice ***Jefferson v. Upton*** 176 L. Ed. 2d 1032, 130 S. Ct. 2217, 2221(2010)

chemically imbalanced. See Law review; ***why fools choose to be fool?*** 54 S.T Louis L.J 38 at 387

With this in mind, self representation would have been the best vehicle for Jordan in light of the forced appointed counsel errors, which cared less about Jordan, let alone the facts of the case (Jordan's brief 32-37). In doing so the circuit court affirmatively hindered Jordan's access to the court ***Piper v Popp,*** 167 wis.2d 633, 658, also see ***State v. Jeannie M.P.***, 286 Wis.2d 721, ¶25 (Ct. App. 2005), see *also* ***Hoover***, 2003 WI 117, ¶6. ***Jefferson vs. Upton*** 130 S. Ct. 2217, at 2223 (2010)

III JORDAN WAS DENIED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Remarkably, the state declares a dry argument that Jordan is procedurally barred from raising the issues against trial counsel *(respondents brief Page* 40-45). The crux of this argument is that Jordan knew about the information in the police reports that were "possible leads" and that the newly discovered evidence is not correlated, (*see Jordan brief app.# 31 bottom right statement by kolett Walker unsubstantiated claims of intimidation regarding Charley, and app 38 regarding Lee*).[2]

However, the Circuit court has long address this issue and gave the parties a chance to reply, in which the state waived and therefore, conceded (R.146.10, *R.95*) ***State v. Clark***, 179

[2] Clearly this information is insufficient to grant relief on its own Thus; the reason why Jordan newly discovered evidence is based on trial counsel failure to investigate these possible leads (Jordan's brief 22-29 also see R.152; 27-8, R.150; 8, 15 Charley was not cooperative,) also (State addressing Jordan ineffective claims and newly as correlated (*respondents brief Page 18 compare with R-ap.371 line 7-11*).. AS for the right hand issue there was no record to even address the issue *(respondent's brief R.AP-301 ¶ 8)* see ***MASSARO v U S*** *123 S. Ct. 1690, at 169.*

Wis. 2d 484 (Ct. App. 1993). Most of all; appointed counsel was ordered to address all identified errors of trial counsel by the 7th circuit (app 25 part A).

Despite the state spin (16-34) Bohach 4 month strike of "*non-communication*" about the case with Jordan "*two weeks befor trial*" is characterized by the State as Jordan's fault is clearly an attempt to minimize the magnitude of the lawyer misconduct and a potentially tragic consequences of attorney Bohach' s frontal assault of his duties. ***Erspamer v. Erspamer*** 337 Wis 2d 1 at 11. For two reasons, it is hard to imagine a more deplorable disregard of a the lawyer duty to communicate then what has occurred here; First, Jordan did not rely passively on Bohach to fulfill his obligation; He repeatedly asked Bohach to communicate and investigate, but was shunned on court dates, and lied about when he hired the private investigator (Jordan brief 36). While the Lawyer's duty to a client is not enhanced as a result of a client's request, Bohach duty being a absolute as to such a critical event----- the failure to act in the face of repeated client entreaties manifest that Bohach disregard of Jordan's best interest that must rectify when legal remedies are inadequate. The trial court pointed out to Jordan during a hearing where Jordan tried to go pro se because his dissatisfaction with Bohach;

> "But right now if Mr. Bohach makes a mistake, if he wasn't prepared like you claim, if he didn't investigate, then your not getting your right to counsel satisfied and you can ultimately have all this thrown out if he doesn't do his job correctly"(R.70;35)

Holland v Florida 130 S. CT 2549 at 2568 (*Finding defendant efforts to terminate his counsel as a relevant factor*)

Turns out, Honorable Judge Franke was right! First, Bohach questioned none of the state witnesses to even evaluate the state case, ***Leibach,*** 347 f3d 219, 251. (Jordan's brief at 46, 6-7, 19-22) Secondly, these witnesses names came up *prior to incarceration* and were "leads" Bohach failed to pursue, he never submitted Jordan's 2nd grade reading level to counter the *supposed admission*, nor submitted right hand evidence to support the defense *(Id 20,48)*. Most of all, Just by Jordan being an indigent pro se litigant to the point that he had to secure his own witnesses during his appeal through mail, has put a dark cloud over Jordan's claims. Perfect example is Charley's possible memory problem (Id 42), or circuit court and the State opinion (Id app 6, 13) (respondent brief at 32). For several reasons these opinion should be rejected by this court. First; there is no evidence to even suggest that this was part of *some scheme that normally goes on in the prison system* as the court hypothetically puts it (Jordan's app 16-18) and the state does not refer us to none. [3] See ***State v Armstead*** 220 WI 2d 626, 628 (Ct. App 1998) secondly, the state and the circuit court thinks that statements that are "*too consist*" implies schemes and fabrication but then in the same stroke hold the same belief about statements that are "too

[3] Although the respondent and the circuit court tries to use Jason Hohnstein as a reason, yet hidden the relevant facts from the circuit court of the threats, pending charge, leniency, and payments to Hohnstein that was not weighed in the circuit court assessment (Jordan brief 32, 44-45) however, It is not surprising that Bohach violations which are the hallmark of the lawyer's code, as well as a centerpiece of the case law addressing the lawyer's fiduciary duties is *not* treated as minor transgressions, but rather as a frontal assault on the lawyer's - client relationship, ***US v Bowers*** 517 F .Supp 666, 617 (Wd. Pa 1981) (*recognizing the failure to communicate with his client violated the fundamental duty of undivided loyalty*) (Emphasis added).Another way to measure the seriousness of a lawyer's misconduct is to ask whether the law governing lawyer's misconduct would to permit a sanction. See ***In Re Disciplinary Proceeding Against Akey*** 193 WIS 2d 1,531 N.W 2d 322 at 324, ***In Re Disciplinary Proceeding Against Glickman*** *559 N.W. 2d 905* at 906 ***Erspamer v Erspamer*** 337 wis 2d 1 at 11

inconsistent", they also refer us to no law that governs these opinions (*respondent brief at 32, R-ap.369*) see (*Jordan brief at 42-49 citing law and facts*) furthermore, there should be no surprise that some of these witnesses end up incarcerated together.[4]Thus being from the same area, and somewhat associates puts these witnesses in a superiority position to know relevant information. 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 MADATES REVERSEL

The new testimony constitute newly discovered evidence

The state does not dispute that Jordan new evidence (Charley, Lee Hohnstein, Davis and Quincy) meet the newly discovery evidence requirement and only "essentially" challenges the "reasonable probability" standard (respondent brief at 24-33). Therefore, the state concedes that Quincy's admission to Davis and charley that Jordan's was falsely convicted in this matter-in which he (Quincy) committed were not negligent in

[4] Although Wisconsin has about six percent of African Americans in the state population, yet almost half of the prison population in Wisconsin are African American see, ***"Re-imagining criminal justice system"*** 2010 WIS. L. REV. 953 at 962) and one quarter of the inmates come from Milwaukee inter city. See, Article; "***Is prison increasing incarceration***", 2008 WI. L. REV. 1049 at 69 (also laying out numerous of factors that explains the disproportion disparities of the 13 percent of African Americans in the United States, one out of three are expected to be incarcerated).Yet, the data and the crime rate does not support such disparities see, Article; "***Students of Mass Incarceration Nation,***" 54 How. L. J. 343, at 352 (2011) *compare with* 2008 WI. L. REV. 1049 at 1060 and, n 211 (Stating the "Labeling theory" causes more crime and the "anecdotal evidence" in major news articles is also a factor) ***also see*** Law review; "***The relationship between prosecutorial misconduct and wrongful conviction"*** 2006 Wis L Rev 399 at 403, and 407

seeking[5], merely cumulative newly discovery evidence that is material to Jordan's involvement, ***Clark***,supra. Rather, the state focus on speculation of Davis, Charley, and Lee reason's that they "may" lie, but not on the reason's why Quincy would lie to Davis and Charley (Jordan's brief at 40-46) That is because there is none. Nonetheless, this court has been clear that the jury does not have to believe the testimony necessarily in order to have reasonable doubt. See; ***state V Edmund*** 2008 WI app33 at ¶ 17

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

The state seems to argue everything but the pillar of Jordan's argument, therefore, concedes "*that Jordan was denied a right to a fundamental fair proceeding and a meaningful opportunity to be heard*" (Jordan's brief at 36 and at 49) Thus, the state response seem to be that Jordan thinks he has a right to counsel (Respondents brief at 47-48). Essentially, in sum the claim is a due process interest, a post-conviction that concerns the validity of the conviction and the sentence, thus, a liberty interest ***Popp*** 167 Wis. 2d 633 at 644-49.[6]This is the crux of Jordan's argument. (*Jordan's brief at* 29, 36, and 49) However, recognizing that; without the right to have access to the court, any other right a prisoner has, are illusory because

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[5] Although the state tries to *"hint"* a *"possible"* act of negligence, they fail to mention there own signed agreement with appointed counsel stipulation of a fixed time for Jordan to submit the affidavits (R. 84. 2, see references also).

[6] Although some states are not required to establish mechanisms for post-convictions relief, when they do, the process must comport with due process ***Evitts v. Lucey*** 469 US 387, 393,400-01 (1985) ***Skinner v Switzer***, 131 S .ct 1289, 1302, (2011); ***Coleman*** 501 US at 755-56, also *773-75.*

he has no way to enforce them, ***McCarthy v Madison*** 503 US 140, 153 also ***Yick WO v. Hopkins*** 118 US 356;[7] Nonetheless, a paper back statement nor collateral attack counsel at evidentiary hearings does not ensure quality, or even minimally adequate representation, especially in light of the technical complexity of post-conviction review, namely befor {and or} at a evidentiary hearing.[8]

As in this case, Hart essentially half argued every piece of evidence Jordan had or didn't argue the best evidence at all, *on purpose*. (*Jordan brief at* 3-10, 29-49, *compare with Harts motion* R.120, 122) Sadly, Hart's conduct goes beyond irrational strategies; these were acts of abandonment due to the fact Jordan repeatedly told counsel to present the relevant evidence after Jordan forwarded the information to him (Jordan brief, 29-36 compare with 36-50, app 43 ¶6).

There was no strategic benefit to Jordan in abandoning the arguments, ***ID.*** Remarkably, instead of decrying the conduct, the State defends it. The fact that Hart made an effective approach to hamper Jordan's ability to comply with

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[7] There is no surprise, that there is a national consensus that recognized these perils and responded to them by providing counsel for condemned prisoners at a critical stage of investigating, researching, drafting, and arguing, at collateral attack proceedings which this court has acknowledged ***State v Peterson*** 2008 WI App 140, at ¶12. 757 N.W 2d 834 (2008). The United States Supreme Court has regarded such emergent consensus, essentially, as an indication of the evolving standard of decency that mark the progress of a maturing society for due process and equal protection purposes, ***Graham V Portuondo*** 506 f3d 105, at 107-109(2007), ***Massaro v. United States,*** 538 U.S. 500, 504-05 (2003).

[8] Without a statutory -constitutional guarantee of minimally *effective "process" what ever that may be...* in state post-conviction proceedings, the actual performance of appointed attorneys, forced whether or not, for prisoners in most states will likely remain "fundamentally inadequate to vindicate the substantive rights provided" ***Dist. Attorney's Office for the Third Judicial Dist. v. Osborne,*** 557 U.S 129 S. Ct. 2308, 2320 (2009). As a result, it is virtually certain in places like Wisconsin, and not at all unlikely in other states, that serious valid claims of federal constitutional error will go unidentified, undeveloped, unpresented and or as here, abandoned. ***Holland v. Florida*** *130 S. Ct. 2549 (2010).* See Law review, ***Facing the unfaceable; dealing with prosecutorial denial in post-conviction cases of actual innocence*** 48 San Diego. L. 401,408 (various procedures for collateral attack enabling access to Justice)

state procedures to challenge his conduct is even more troubling. [9] First, Hart refused to file a motion for reconsideration of the circuit court's ruling, despite Jordan pointing out the errors that was made. See; (*Jordan' brief 3-10,29-36*). Secondly, Hart mislead Jordan about how many days he had left to file a motion for reconsideration (30 days), when it was only 20. Then, once the circuit court sent attorney Hart the final order, Hart waited a week to send Jordan a copy, then waited another week to forward Jordan's paper work that was necessary to file the motion for reconsideration, (trial @ hearing transcripts, police report, and pleadings) this was unreasonable ***Dist. Attorney's Office for the Third Judicial Dist. v. Boyle*** 2012 WI 54 ¶5 (Jordan's brief at 17, App 43 ¶2). [10] Thus, coupled with the circuit court forcing Hart on Jordan and Hart interference with Jordan's ability to comply with state procedures after Hart's abandonment of Jordan's claim(s), has created an "extraordinary circumstance" out of Jordan's control that can

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[9] See Law review; **facing the unfaceable**, *supra* at 402 (prosecutor's refusal to ethically acknowledge wrong, even when proof is provided).also see **Instituting innocence reform**; 2006 Wis L. Rev. 645 at 645, but also see 723(identifying inadequate representation as a one of the causes of wrongful conviction). Accordingly, this case offers this court an occasion to take account of the dangerous fissures that have opened in the post-conviction evidentiary realm, the significant developments that have occurred in the intervening years that prisoners cannot fairly litigate constitutional claims raised in state post-conviction proceedings ***Portuondo*** 506 f3d 105, *also see* ***Evitts,*** 469 U.S. at 396 ("*[A] party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all.*").

[10] This left Jordan with only a few days to file a motion for reconsideration, Thus; the arguments the state makes about Jordan's "*incoherent*" and "*merely made an argument*" arguments supports what Jordan been saying all along (Respondent brief 49-54. *Appellant brief 29-37, compare with Jordan's reconsideration motion*). Thus the issuance of a dispositive post-conviction order that can affect an inmate's ability to challenge the constitutionality of his conviction, courts warrants notice that is--at least-- "*reasonably calculated*" to reach the inmate. Thus Jordan didn't have all the records or to make reference, however; the state witnesses Jordan referred to that Bohach failed question have references, which the state has failed to see(***respondent brief at 50, compared with Jordan's brief*** at 15, 16,33, 47-48 R;131;4-fn 4,therefore the state witnesses are Derrick Clarke, Arnell Rhodes, Antonio Rivera, Kolett Walker).Having that been said, this was not a mere lapse in the standard of care, whether this court is presented with several fundamental breaches of the most scarce duties that are long predated duties that have enshrined in the foundations of agency law (the roots of much of the law s governing lawyers).

not fairly be attributed to Jordan ***Holland*** 130 S. CT 2549 at 2568

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

A. Reversal is appropriate in the interest of justice and the Real Controversy not Fully Tried

Sadly the state attempt to capitalize off any procedural bar it can while in the same stroke argue Jordan to be incompetent to even waive the particular right. (Respondents brief at 35-54). Even if this Court does not deem the identified errors sufficient to constitute ineffectiveness of counsel and denial of due process, the combine effect of those errors justifies reversal in the interest of justice under Wis § 752.35, because they resulted in the real controversy not being fully tried ***State v. Hicks*** 549 N.W 2d 435, 440 (1996). Here the jury was erroneously not given the opportunity to hear important testimony that bore on important issues of the case, as well as a miscarriage of justice ***Vollmer v Luety*** 156 wi 2d 1, 456 nw 2d 797, 803 (1990)[11].

Again the central issue was whether Jordan was the shooter. Because the jury heard evidence of Jordan *supposed confession* and was not allowed to hear substantial evidence

[11] Under the "real controversy not tried", category of the "interest of justice", "it is unnecessary to first conclude that the out come would be different on a retrial" prior to ordering a new trial, ***Vollmer*** 456 N.W. 2d at 805. As demonstrated in section §752. 35, supra, however, the facts establish just such a probability of an acquittal upon retrial. Furthermore, The 7th circuit decision illustrates the importance of admitting all evidence tend-ably claimed to have been excluded due to the actions of defense counsel ***Gomez v. Jaimet*** 350 f3d 673, 677 (7th 2003).. However the petitioner in Gomez asserted the miscarriage of justice exception on a procedurally barred habeas petition. That court also recognized that where the petitioner asserts ineffective assistance of counsel for failure to introduce exculpatory evidence, the newly discovered evidence rules would strip the miscarriage of justice exception of its express purpose------ identifying potentially innocent people.

underminding all three pillars of the state case against Jordan, the matter that Jordan was not involved was not fully and fairly tried and this court should exercise its discretion to order a new trial under § 752. 35. Also see Id 805.

B. Miscarriage Of Justice

For similar reasons, the interest of Justice also require a new trial to be granted because it is probable, given the errors already discussed that Justice has Miscarried in this case.[12]Given the substantial prejudice resulted from prior counsel(s) (*Jordan brief* 12-22,28-50) errors that essentially breached and abandoned the standard of care owed to the client, the state understandably seeks to minimize that damage by addressing the effect of in artificial isolation. (***Id*** 3-10, 29-49) that is not only inappropriate legally. *See* ***State v Thiel*** WI 111 ¶ 59, 264 WI 2d 571, 665 2d N.W 2d 305 but It also creates some rather glaring instances where the state relies on the absence of one error in an attempt to Minimize the prejudice effect of another (*Respondent* 13-32-35-40-45, 47-54)

Despite the states spin, none of the new evidence is patently incredible **Penister v. State,** 74 Wis. 2d 94, 103 (1976). Rather the state theory of law is that when statement

[12] Here, Quincy confession was made to Charley and Davis, under oath to a notary public and seen right after the shooting with Blake and a gun by Lee; therefore, the statement has circumstantial guarantees of trustworthiness. See ***State v. McCallum,*** 208 Wis.2d 463, 561 N.W.2d 707 (Wis. 1997) (Statements given under oath carried circumstantial guarantees of trustworthiness.) an admission against his own interest makes is more credible, not less, cf., **Wis. Stat. 908. 045 (4)** also see Jordan brief (40-43) If counsel would have investigated it is possible that these leads would've been discovered. even if the odds that the Jordan would have been acquitted had he received effective representation appears to be less then fifty percent, Prejudice been established so long as the chances of an acquittal are better the negligible". ***Leibach,*** 347 f3d 219, at 246,

are "*too inconsistent*" they are fabricated, while holding the same theory for statements that are "*too consistent*" later adopted by the circuit court that the state disputed evidence somehow render conviction inevitable which is not the standard (App) ***Kyles***, 514 U.S. at 434-35. Also see ***Leibach***, 347 F.3d at 246.Also stated (*the question is what effect these witnesses testimony would have had back then, not today*) Id. at 232[13]

Likewise it is also up to the jury to determine whether affirmative evidence of Jordan's innocence would give it reason to doubt the allegation of two officers who knew they lacked hard evidence against Jordan absent an easily fabricated admission that was nonetheless not disputed and thus conceded by the state that Jordan's 2nd reading level school records not only substantially undermined the states case but is also affirmative evidence of Jordan's innocence, (*Jordan's brief at* 38-40)

Furthermore, the state does not dispute and therefore concede that it used contrived method to convict Jordan (**Id** 46-50) which the state continues to do when the leading detective lied under oath about post-conviction interviews (**Id** 47 fn #8), and also did not refute the fact that they

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[13] The respondent is wrong about Charley's characterization of the affidavit he signed as a "forgery" (150;19-20) this was clearly some confusion about the affidavit signed in 2003 that was signed again in 2009 but notarized this time, and a classy trickery on the A.D.A behalf on a frustrated witness. However, the time of day charley speaks of is a question for the jury, (**Id.** 150;6), fore, the affidavit signed and the statement charley gave to the leading detectives in 2009 are consistent with the time the incident happened ***Jordan v People***, 151 Colo 133, 139 (1962) which Charley said he don't remember everything (respondents brief R-AP.321).yet there could be a sound explanation for saying it happened at "day time", charley never wanted the facts to get out about Quincy and bias which the state conceded (ID.R-AP.195), plus in the month of June, the sun don't set until close to 9:00 p.m. plus the lights in the gas station could also effect a malleable memory and the have an affect of the trial counsels failure to question this witness 11 years ago. However, The respondent at 23, seems to think The allegation of intimidation of charley were true that's why the state never mentioned it and hart ran from calling kolett walker to testify at the hearing (Jordan's brief at 33)

paid, and threaten Jason Hohnstein to testify for them who had a pending charge evidence (relative to his credibility assessment) (***Id at 32, 45***) ***Clark***, Supra, other conceded facts[14]. ***The relationship between prosecutorial misconduct and wrongful conviction"*** 2006 Wis L Rev 399 at 403, 407. Indeed unlike the states witnesses, none of the defense witnesses had an apparent reason to lie. ***United States ex rel. Hampton v. Leibach,*** 347 F.3d 219, 249-50 (7th Cir. 2003) Thus, the question of whether Hohnstein testimony has the edge are for the jury, as are the issues of whether Quincy, Lee, Charley, and Davis attesting Jordan's innocence. ***Edmunds*** 2008 WI App 33 at ¶17.This court can not resolve a non-frivolous factual dispute ***In re Marriage of Trieschmann v Trieschmann***, 178 Wis.2d 538, at 544.The court must vacate the conviction and allow the jury to determine whether the State's spin is sufficient to meet the burden beyond a reasonable doubt, **Edmunds** 2008 WI app 33, at ¶17. The proper Remedy is a new trial, at the stage which he failed to receive the effective assistance[15].

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[14] Hohnstein charge was regarding stealing money form the government which is also his prior, an does not dispute, and therefore concedes to the following; this is critical to Hohnstein assessment since money was involved, Hohnstein will say anything for money if desperate and threaten with ten-five years, which was the case here Jordan's brief at 31 (1) that Charley is possibility bias for Quincy against Jordan and made contradiction testimony in Quincy's favor (Jordan's brief 42) (2)That Lee's threats from Quincy friends not to testify for Jordan constituted cause for being uncooperative with the detectives (Jordan appellate brief 40) (3)That the P.I. receipt prove Bohach lied to the courts about the time he hired her and this report refute any claims of pursue the named witnesses. (*Id* 36)

[15] As a matter of law, the record befor this court support a finding of cause. But if this court disagrees and believes that any of the factual issues raised by the State are relevant, it should at least reverse and remand for an evidentiary hearing, see, *Holland at 2565.also at Upton* at 2223. As discussed, the State had conceded and waived a lot of the facts related above. The state position is based on an erroneous, incomplete and misleading view of pertinent events and relationship. Jordan recollection of events alone with attorney correspondence in his possession (App 43), contradicts the State's characterization of pertinent events in material respect.

Dated at Boscobel, Wisconsin this 7th, day of ~~February~~ March, 2013

Respectfully Submitted,

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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 to the rules 809.19 (8) (b) and (c) for a brief produced with Monospaced Font. This font is Lucida console-12, with ~~2,691~~ words that doesn't include footnote in the count

Dated at Boscobel, Wisconsin this 7th, day of ~~February~~ March, 2013
Joseph Jordan, Pro Se