

STATE OF WISCONSIN
C O U R T O F A P P E A L S
District III.

In the matter of refusal
of Maurice J. Corbine:

SAWYER COUNTY,

Plaintiff-Respondent,

-Vs.-

Case No. 2013AP650

MAURICE J. CORBINE,

Defendant-Appellant.

ON NOTICE OF APPEAL FROM THE DECISION AND ORDER
DENYING A WRIT OF CORAM NOBIS AND RECONSIDERATION
ENTERED IN THE SAWYER COUNTY CIRCUIT COURT, THE
HONORABLE JOHN ANDERSON, PRESIDING.

Maurice J. Corbine
Defendant-Appellant, Pro Se

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ISSUES PRESENTED FOR REVIEW

- I. Was The Fact The Arresting Officer Failed To Provide Field Sobriety Tests, As Well As The Fact Corbine Did Not Refuse Any Testing Requested Both Factors Which The Court Was Not Aware Of At The Time Of Conviction, Grounds For Dismissal Of The Charges.

Trial Court Response: No.

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**STATEMENT OF ORAL ARGUMENT AND
STATEMENT ON PUBLICATION**

Maurice J. Corbine does not request oral argument on the issues presented for review, as the issues are factually based on the record and there exists no need to further expound the arguments.

Furthermore, Corbine does not request publication of the issues presented as the issues are deemed novel in nature and are based on current standing provided by both state appellate and supreme court precedence.

STATEMENT OF THE CASE

On September 26, 2004, Officer Dailey, of the Lac Courte Oreilles Tribal Police Department, Sawyer County, stopped a vehicle for squealing his tires. Corbine, the driver, exited the vehicle at which time; Officer Dailey determined Corbine was intoxicated, through his speech, stance and the strong odor of alcohol. (Appendix 300) Dailey, on her own accord did not conduct any field sobriety tests because she determined Corbine was being argumentative. *Id*

Corbine was arrested and transported to the hospital for a legal blood draw. *Id.*

Afterward Corbine was transported to the Sawyer County jail. *Id.*

Officer Dailey issued Corbine a citation, 2004TR001904 for failure to take a test to determine intoxication or implied consent. (Citation #E9923675) *Id.*

The district attorney filed a criminal complaint on October 20, 2004, 2004CT178, which included, Count 1, Operating a Motor Vehicle While Intoxicated- 4th Offense, Alcohol Fine Enhancer, contrary to sec. 346.63(1)(a), 346.65(2)(d), and 346.65(2)(g)2 Wis. Stats. Count 2 Operating a Motor Vehicle With Prohibited Alcohol Concentration- 4th Offense Alcohol Fine Enhancer, contrary to sec. 346.63(1)9b), 346.65(2)(d), 346.65(2)(g)2, Wis. Stats. Count 3 Operate Motor Vehicle After Revocation-First Offense, contrary to sec. 343.44(1)(b), 343.44(2)(b) Wis. Stats. Count 4, Possession Of Drug Paraphernalia contrary to sec. 961.583(1) Wis. Stats. *Id.*

On October 26, 2004, the Sawyer County Circuit Court, found Corbine guilty of the implied consent violation and revoked Corbine's driving privileges for 3 years. (Appendix 300)

On April 30, 2007, Corbine pled guilty to inattentive driving in 2004CT178, and all other charges were dismissed. (Appendix 400)

Corbine filed a petition for writ of coram nobis with the trial court, and on October 3, 2012, the court denied the writ on December 5, 2012. Corbine filed a motion for reconsideration which the trial court scheduled a hearing on January 30, 2013, and was reschedule to and denied in an oral ruling on March 6, 2013.

This appeal now follows.

STATEMENT OF FACTS

In addition to the procedural history provided supra, Corbine asserts he was not found convicted of the charge of violating implied consent as stated in 2004TR001904, and to the contrary this matter was dismissed, as the criminal complaint 2004CT178

was moving forward at the time, and the court determined it was not appropriate to maintain both actions.

Further, Corbine asserts, the criminal complaint 2004CT178, specifically the probable cause statement surrounding the incident which led to 2004TR001904, clearly disputes the fact Corbine denied the direction of Officer Dailey to take any test to determine intoxication. Corbine specifically directs this court's attention to the probable cause statement in 2004CT178, "Field Sobriety Exercises", in which Officer Dailey writes, "Due to safety factors I opted not to conduct field sobriety tests because he was being argumentative." (Appendix 300) This statement from the arresting officer clearly demonstrates Corbine was never provided with any direction to or ability to follow field sobriety tests. As such, Corbine could not refuse the field sobriety test, which was the subject of 2004TR001904. This same officer, noted Corbine, passed out in the hospital prior to the blood draw, and could not consent voluntarily.

Furthermore, the 2004CT178 case was dismissed as Corbine pled to a charge of inattentive driving pursuant to Wis. Stat. §346.89. The reason for the dismissal of the charges, was due to the fact, the State lost the video of the arrest. (See Plea Transcripts)

Corbine now moves to the issues at hand.

ARGUMENT

I. Was The Fact The Arresting Officer Failed To Provide Field Sobriety Tests, As Well As The Fact Corbine Did Not Refuse Any Testing Requested Both Factors Which The Court Was Not Aware Of At The Time Of The Conviction, Grounds For Dismissal Of The Charges.

A. Standard For Review

Corbine respectfully requests this court to grant his petition for writ of coram nobis. The writ of Cram nobis is a discretionary writ of “very limited scope” that is “addressed to the trial court”. *Jessen v. State*, 95 Wis.2d 207, 213, 290 N.W.2d 685 (1980). “The purpose of the writ is to give the trial court an opportunity to correct its own record of an error of fact not appearing on the record and which error would not have been committed by the court if the matter had been brought to the attention of the trial court.” *Id* at 213-14; *see also Ernst v. State*, 179 Wis. 646, 652, 192 N.W. 65 (1923) ([T]he principal aim of the writ of error coram nobis [is] to afford the court in which the action was tried an opportunity to correct its own record.”)

“A person seeking a writ of coram nobis must pass over two hurdles.” *State v. Heimermann*, 205 Wis.2d 376, 384, 556 N.W.2d 756 (Ct. App. 1996). First, the individual must establish that no other remedy is available. *Id. Heimermann*, 205 Wis.2d at 376. “Second, the factual error that the petitioner wishes to correct must be crucial to the ultimate judgment and the factual finding to which the alleged factual error is directed must not have been previously visited or ‘passed on’ by the trial court.” *Id.* In other words, “there must be shown the existence of an error of fact which

was unknown at the time of and which is of such a nature that knowledge of its existence at the time...would have prevented the entry of judgment.” See *Jessen*, 95 Wis.2d at 214. The writ does not “correct errors of law and of fact appearing on the record since such errors are traditionally correct by appeals and writs of error.” *Id.*

With the standard for review outlined, Corbine now will apply the specific facts of his case to the standards.

B. Dismissal of Action

First and foremost, Corbine alleges, he attended the hearing in this matter, 2004TR001904, regarding the citation issued, and the court dismissed the action due to the pending criminal matter in 2004CT178 the court noted the similarity in charges as a foundation for dismissing the citation. Corbine alerted trial counsel assigned to him in case 2004CT178, but it was only in 2007, case 2007CF166 was tried before a jury and he was found guilty. See Appendix 400. Corbine alleges trial counsel would not challenge the validity of 2004TR001904. (See Appendix 800)

Unfortunately, pursuant to the clerk of court for Sawyer County, there exist no records surrounding this matter as the records have been purged, following the policies and procedures of the clerk’s office, providing cases over 5 years are purged from the files. *Id.*

The trial court in its review relied upon the complex forfeiture court record, which indicated the complaint was filed on 10-20-2004, and a default judgment was entered/the defendant failed to request a hearing. Finally, on 10-20-2004, a dispositional

order/judgment was filed. See Appendix 900. **Interestingly, all these actions occurred on the same day.** There is no record of Corbine receiving notice of the hearing and as there was a default judgment entered; Corbine was not present at the hearing. The complex forfeiture court record fails to show that the court provided Corbine with the default judgment as required by Wis. Stat. §345.37(1)(b). This contradicts Corbine's statement/affidavit provided within the petition for writ of coram nobis that he was present at the hearing and the court dismissed the charges. More importantly, the question of the validity of the complex forfeiture court record comes into play, as it is clear the document is not complete, as there exists no statement Corbine was notified of the disposition of the hearing, providing the chance to challenge the disposition, denying him the right to due process.

C. Facts Unknown To The Court At The Time Of Conviction

Assuming the record is correct, and Corbine was found guilty of the violation provided in the citation, Corbine now moves forward and demonstrates such a conviction is not legally possible.

In this case, 2004TR001904, Corbine was convicted for failure to provide consent to sobriety test(s). This action was initiated through the citation issued by Officer Dailey following the arrest of Corbine. (Citation #E9923675). Following the issuing of the citation, Officer Dailey submitted to the District Attorney's Office of Sawyer County the arrest report for consideration of further charges. (Appendix 300)

Corbine asserts, the trial court was unaware of the fact Officer Dailey, **did not** provide any field sobriety tests. *Id.* Furthermore, in the probable cause statement, Officer Dailey specifically states

that Corbine did not refuse, but merely responded by asking for counsel. *Id.*

Clearly, and without question Corbine did not refuse any test which would determine if in fact he was intoxicated. *Id.* In fact, there was nothing written or mentioned in the probable statement, which would lead to the contention Corbine refused any test. *Id.* Yet, he was convicted this offense.

D. No Further Recourse Available

Corbine does not have any alternative legal recourse in which to litigate this action. Corbine is not incarcerated at this time for this offense, the time in which to appeal the matter to the court of appeals has long been expired and as such Corbine may only correct this matter via the petition for writ of coram nobis. *Id.* *Heimermann*, 205 Wis.2d at 376.

E. Unknown Facts, Which Would Lead To A Different Decision

The second prong requires Corbine to demonstrate a fact, which the court was not aware of or missed in making its determination, a fact that, if brought to the court's attention would lead to a different determination. *See Jessen*, 95 Wis.2d at 214.

The fact, which Corbine asserts the court was not aware of at the time of its decision, is that Corbine never refused any sobriety test, no sobriety test was offered to Corbine prior to being sedated at the hospital. The arresting officer clearly states within the probable cause statement this fact. A fact, if the court would have known but did not, as the court did not have access to the probable cause statement provided in 2004CT178. (Appendix 300)

Corbine did not provide this information as at the time of the hearing on this matter; he did not possess the probable cause statement provided in 2004CT178.

With the statements from the arresting officer Dailey, that Corbine never refused any sobriety test, field or otherwise as documented within the probable cause, Corbine cannot be found guilty of refusing to submit to sobriety tests.

Implied Consent provides:

(2) Any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, is deemed to have give consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs, when requested to do so by a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility. 2 of the 3 tests under sub. (3)(a),(am) or (ar), and may designate which tests shall be administered first.

Wis. Stat. §343.305 (2012)

Therefore, it is clear; Corbine must clearly refuse to take 1 of the 3 required test when requested by law enforcement to be guilty of the offense charge. Reading from the probable cause statement, Corbine did not refuse. Of course, Corbine does not deny his behavior during the arrest was not or could not be deemed “cooperative” he did not refuse any tests.

Meeting these two standards of a writ of coram nobis, demonstrating Corbine has no alternative recourse to correct this matter, and the fact is crucial to the finding of guilty without such

a fact, Corbine could not be found guilty of the charged offense. Corbine asserts, that if this court was aware of this fact he would not have been found guilty of the offense. Corbine now asks this court to review the attached documents, find that by the arresting officer's own admission Corbine did not refuse to submit to the sobriety tests, that in fact he was never asked for a field sobriety test, and at the hospital, Corbine merely asked to have counsel presented, after which he was sedated at the request of Officer Dailey. This description of the events after his arrest clearly does not meet the standards of Wis. Stat. Wis. Stat. §343.305 (2012).

F. Loss Of The Video Depicting the Arrest

It must be made known to the court, that the prosecution of 2004CT178 was greatly amended due to the State not having the police video; in fact, the State never provided the video to the defense. The defense moved for all evidence associated with the video to be suppressed.

More specifically, the basis for the motion is that Officer Dailey lacked probable cause to detain Corbine for questioning. The court granted the motion, and as a result, the State amended the charges to inattentive driving for count 1, while dismissing the remaining three charges. Two of these three additional charges which were dismissed would have, if found guilty, be classified as an offense under Wis. Stat. §343.307(1) (f), yet the State chose to dismiss the counts for lack of evidence.

The point being, in this case, the same evidence used in the 2004CT178 would be or should have been made available in 2004TR001904, and with assertion it is clear, if the State could not have made its case in 2004CT178, they clearly could not have

made the case in 2004TR001904, as it was the same evidence in both cases. More importantly, the loss of the video was not known to the Court when it made its decision in 2004TR001904. The suppression of the evidence in 2004CT178 was not known by the court; as such, it is clear, if the court had known this information, it would have dismissed 2004TR001904, for the same reasons as the charges were in 2004CT178.

The standards of coram nobis outlined supra are clear and will now be applied.

CONCLUSION

WHEREFORE, Maurice J. Corbine is requesting this court to vacate the judgment in this matter, finding that the error presented within this petition is material, which was unknown to the court at the time of its decision and was material if known would have required the court to not make the same or similar decision.

Dated this 10th day of June, 2013.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced with a proportional serif font.

The length of this brief is 3570 words.

Dated this 10th day of June, 2013.

APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinions cited under §809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decision showing the circuit court's reasoning regarding those issues.

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

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of person, 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
reference to the record.

Dated this 10th day of June, 2013.

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