

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

In the matter of refusal
of MAURICE J. CORBINE:

SAWYER COUNTY,

Plaintiff-Respondent,

vs.

CASE NO. 13AP650

MAURICE J. CORBINE,

Defendant-Appellant.

APPELLANT'S REPLY BRIEF

Maurice J. Corbine
Defendant-Appellant, Pro se
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Stanley, WI 54768-6500

CERTIFICATION OF MAILING

I Maurice J. Corbine, hereby state that I did place this in the Institutional Mail Box 5 copies of my Reply Brief correctly addressed to the following addresses:

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One Copy to Wisconsin Department of Justice
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Mail on todays date December 4th 2013, from Stanley Correctional Institution.

Respectfully,

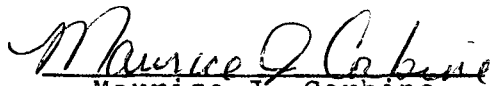

Maurice J. Corbine
Pro se Appellant

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STATE OF WISCONSIN
C O U R T O F A P P E A L
D I S T R I C T I I I .

In the matter of refusal
of Maurice J. Corbine,
SAWYER COUNTY,

PLAINTIFF--RESPONDENT,

vs.

CASE No. 13AP650

MAURICE J. CORBINE,

DEFENDANT--APPELLANT.

APPELLANT'S REPLY BRIEF
IN SUPPORT OF HIS APPEAL.

ISSUE'S PRESENTED

- I. THE WISCONSIN COURT OF APPEALS NEVER LOST JURISDICTION TO REVIEW THE WRIT OF CORAM NOBIS OR RECONSIDERATION MOTION.

- II. THE CIRCUIT COURT DID ERRONEOUSLY EXERCISE DISCRETION WHEN DENYING CORBINE'S MOTION FOR WRIT OF CORAM NOBIS AND RECONSIDERATION BECAUSE THERE WERE FACTORS OUTSIDE OF THE RECORD THAT WOULD HAVE DISMISSED THE JUDGMENT.

STATEMENT OF ORAL ARGUMENTS
AND PUBLICATION

Appellant Corbine hereby request that this case be published because it contains issue's that the public needs to know about. Oral arguments are not requested.

On July 11, 2013, this Court issues an order stating that the Court lack jurisdiction to review the denial of the December 5th 2013, order because it was filed past the 90 day deadline to appeal pursuant to §808.04(1)(d).

Corbine moved for the court to reconsider it's decision . It is this Court's contention that the December 5th 2013 was the final hearing date to appeal or comply with the 90 day deadline.

The Court of Appeals directed the parties to address whether the court has jurisdiction to review the reconsideration order.

ISSUE I

THE COURT OF APPEALS NEVER LOST JURISDICTION OVER CORBINES APPEAL OR RECONSIDERATION MOTION.

The first issue presented is whether this court has jurisdiction to review Corbines appeal, because according to the Court the last hearing dated was December 5 2013.

However, the Circuit Court Judge held a Hearing on the Motion for Reconsideration on **MARCH 6th 2013**, which vioded the December 5th 2012 Court decision. Corbine brings this up in his Appeal Brief P.6.

The court actual set two court dates up the first was January 30th 2013, which was rescheduled until March 6th 2013. At which time Judge Anderson made the statement that all motion are denied on case number 04TR1904 & 07CF166.

Corbine then filed his appeal on March 15th 2013, This is clearly with in the 90 day deadline under § 808.04(1).

Due to Corbine not being legally educated, nor understanding that he misdated the final hearing date on Case No. 04CT1904, he misstakenly put down 12-5-12 as the final date which would have violated the 808.04 rule, however, since the Circuit Court held a hearing on the motion to reconsider it stopped the 12-5-12 final hearing and made it March 6th 2013.

In the July 11, 2013 hearing this Court made the reconsideration motion a issue, Corbine then petitioned the Circuit Court on July 18 2013 under §806.07 "**MOTIN TO VACATE JUDGMENT**" On July 25th 2013 Judge Anderson set a hearing date of Sept 11 2013. At this hearing

Judge Anderson stated in the Transcripts Page 7 ¶24-25, and Page 8 ¶¶ 1-9 & 23-24 "...Well it seems to me I have---the court recognized that verbal orders and decisions were made on the record that were not reduced to written order per se. That was taken care of with the **MARCH 6th 2013 order regarding these issue's**. The Court executed that order and there's nothing more for the court to do." "...There's nothing more for me to do, because I've done it...." (See Attached Transcripts dated Sept 11 2013, pages 7 & 8, & 9 Ex A)

The State's brief is misplace on the Date the Court order denying Corbines Writ of Coram Nobis the date was March 6th 2013 not Dec 5th 2012 as prevesly stated by both party's.

Seeing how Judge Anderson stated again on Sept 11 2013 that the final denial was March 6th 2013 this court never lost jurisdiction and therefore this issue is Moot.

If this Court decides that Corbine's reconsideration motion some how violated the 90 day deadline, it should find that it has no impact on the issue's persented in this appeal. On Dec 5 2012 the Circuit court never made any ruling on the 04CT1904 case at that hearing instead it just denied it without stating it's reasoning on the record, even know it held a hearing.

If Corbine has to argue that A appeal cannot be taken from an order denying a motion for reconsideration which presents the same issue as those determind in the order sought to be reconsidered accord to Silverton Enters., Inc. v. General Cas. Co, 143 Wis 2d 661,665 (Ct.App. 1988)

Corbine states that the "new issue" in the reconsideration motion was the fact that Judge Anderson did not rule on the evidence put before him. He simply denied case No. 04CT1904.

New Issue presented to the Circuit Court: "The Court's decision in this matter, denies Corbine of his due process rights as protected and outline in the provisions of the writ of coram nobis. To merely rely on the very same documents which Corbine

assers is the subject of this matter, as being defective without corroboration of any kind, while refusing to review the arguments and record presented by Corbine clearly defies the purpose of the writ of coram nobis...."

This clearly presents a new issue because the court failed to place on the record it's reasoning and relied on defective and **uncorroborat**ion of any evidence.

"...Corbine ask this Court to establish the record and in doing so consider the arguments presented by Corbine, as well as the supporting documents ...Furthermore, this Court is asked to apply the standard of the Writ of Coram Nobis, which too, requires the court to review facts outside the record...."

This clearly states that Corbine is asking the Court to follow the Law and it's rules as they are written, instead without saying follow the law and not your will. The fact that Corbine tries to get the Court to do it's Job, Corbine pleaded with the Court to review and at lest state on the record why it was denying Corbines Motion.

Corbine brings this to the Court's attention The Court says Corbine may have violated rule 808.04, However if you Look at All Judge Anderson denial not a one of them are correctly cited. Wis.Stat. §806.06 (5) Clearly states "Notice of entry of Judgment or order must be given 21 days after the entry of Judgment or Order to constitute notice under s.808.04, In this Case the March 6th order was not written until 5-1-13 almost 60 days after the denial in violation of 806.06.

Furthermore under Wis.Stat. § 807.11(1)(2), An order is rendered when it is signed by the Judge. (2) An Order is entered when it is filed in the Office of the Clerk of Court.

The March 6th Order was not written until 5-1-13 that is also the day it was filed in the Clerk of Court's office. Yet Corbine may be punished for misstakingly puting 12-5-12 as the final hearing date, when infact it was March 6 2013, clearly within the Deadline time frame.

Therefore the Court of Appeals NEVER LOST JURISDICTION of this appeal and **no weigh should be given to it**, because it is moot, by the Circuit Court's Sept 11 2013 order.

ISSUE II The Circuit Court did erroneously exercise discretion when denying Corbine's Motion for Writ of Coram Nobis and reconsideration because there were factors outside of the record that would have dismissed the judgment.

According to the state's reply brief at P.6 "Corbine does not raise any issue or any allegations which if known at the time of the default judgment."

Corbine states "Seriously" had Judge Yackel known that the arresting officer TWYLIA M. DAILEY lost the DVD of the Stop and of the Police Booking ROOM, and most important of all is Officer's Dailey's Written statement of **"DUE TO SAFETY FACTORS I OPTED NOT TO CONDUCT FIELD SOBRIETY TEST, BECAUSE HE WAS ARGUMENTATIVE,"** (SEE Corbine's Ex-300 of his Appeal Brief under Field Sobriety Exercises, Case No. 04CT178)

This was clearly Officer Dailey's decision not to give the mandatory field sobriety exercise to Corbine. Instead she opted to take Corbine to the Hospital to have a blood test taken.

Which Corbine could not consent to the blood test because the Hayward Hospital Doctor **Sadated Corbine**. Corbine never refused any test had Officer Dailey not destroyed the DVD the Court would have been able to see that Corbine took the test in the Pre-Booking Room in the Jail and passed the exercises Dailey had him perform.

While at the Hospital and in Officer Dailey's written report she states " ... Then I read him the informing the Accused Form and asked him if he would give a sample of blood, Corbine **DIDN'T SAY "NO"....** "...Corbine fell asleep so Officer Valentin and I lifted him to a cot in the hallway, we then had the lab technician come in so he could draw blood...." (See Corbine's Brief Ex 300)

Corbine could not refuse Officer Dailey's request because he was passed out. Had the Trial Judge known this he would have questioned the legality of the Refusal. One cannot refuse if he is passed out!!

Corbine argues that this alleged refusal stems from Case No. 04-CT-178 where Corbine was charged with a 4th OWI, which on 4-30-07 by the Prosecutor Van Roy's Own Dismissal Motion/Amended Motion under §967.055 (2)(a) which states: "Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s.346.63 (1) or (5)

or a local ordinance in conformity therewith, or 346.63 (2)(6) or 940.25 or 940.09, where the offense involved the use of a vehicle or "IMPROPER REFUSAL" UNDER § 343.305, the prosecutor shall apply to the Court. The application shall state the reason for the proposed amendment or dismissal."

Corbine presents in this reply brief a copy of the Dismissal of the OWI which also included refusal. (See Attachment Court Order Ex B & C)

It is Corbines understanding that once the District Attorney dismissed the OWI (Case No. 04CT178) it also dismissed the alleged refusal 04TR1904, because the District Attorney used §967.055(2)(a) which includes the refusal under §343.305.

Furthermore, the State argues Brief at P.8, "There is no legal argument which Corbine can succeed in vacating the Default Judgment in 04TR1904. The Judgment was a default and the record is void of any request for a refusal hearing with the Circuit Court.

Had the Circuit Court known that the Officer lost/willfully destroyed the only evidence that would have proven Corbine was not the driver, and did not refuse any field sobriety test requested by Officer Dailey.

Had the Circuit Court known that Officer Dailey wrote in her report that "She refused to give Corbine the tests" and that Corbine did not refuse the Blood test because he was sadated by the Hayward Hospital Doctor, (See Appeal Brief Ex 300) Corbine ask where in GODS name did Officer Dailey get a refusal??? Dailey herself admits Corbine did not say "NO" to the Blood test.

Of course Corbine was upset, anyone would be upset when he is being falsely accused.

Furthermore, If the District Attorney Dismisses an OWI under §967.055(2)(a) the refusal must also be included, because the Officer clearly lacked probable cause to stop Corbine to begin with. If the District Attorney felt that there was sufficient evidence to proceed with the OWI it would have.

But since the district attorney amended the charges from OWI to inattentive driving, clearly demonstrates that the Stop was unjustified.

CONCLUSION

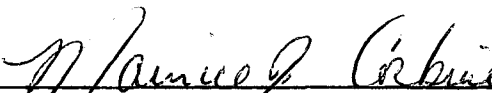
Corbine argues that this is nothing more than a clerical misprision on the part of the Clerk of Court in Sawyer County. They failed to inform the DOT that the OWI and Refusal was dismissed when the District Attorney Dismissed the OWI, and amended it to Inattentive Driving.

It doesn't matter if the refusal is a separate offense, however, if the Arresting Officer admittes to not doing the feild test how can Corbine be accused of refusing to take the test?? He cannot be punished because the officer failed to do her job, yet that is what happened here, and had Judge Yackel known all of this he would have dismissed the improper refusal 343.305 Wis.Stat.

Corbine ask this Court to reverse this Refusal and or denial of the circuit court's denail of an evidentiary hearing, and order that Corbine is to receive a hearing where the Court can decide the fact and place on the record why it failed to honor the Dismissial of case no. 04CT178 and all evidence pertaining to it, including the improper refusal 04TR1904.

DATED THIS 4th DAY OF DECEMBER 2013 .

RESPECTFULLY SUBMITTED,



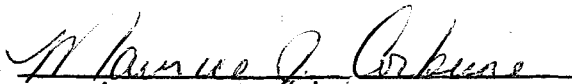
MAURICE J. CORBINE
PRO SE APPELLANT

certification

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wisconsin Statute §809.19.

Dated this 4th December 2013


Maurice J. Corbine
Pro se Appellant