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COURT OF APPEALS
STATE OF WISCONSIN
DISTRICT 2

APPEAL CASE NO. 2018AP000484

State of Wisconsin,

Plaintiff-Respondent,

v.

Tracy E. McCarthy,

Defendant-Appellant.

Appeal from Waukesha County Circuit Court
The Honorable Lee Dreyfus Jr. Presiding
Case NO. 2016CM000631

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT
TRACY MCCARTHY

Tracy McCarthy
531 union street
Oconomowoc WI.
53066
(262) 569-9438

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TABLE OF AUTHORITY

Arizona v. Youngblood 488 U.S. 51, 102 L. Ed. 2d 281, 109 S.Ct. 333 (1988)

Brady v. Maryland 373 U.S. 83 (1963)

California v. Trombetta 142 Cal. App. 3D 138, 190 Rptr 319

Kyles v. Whitley 514 U.S. 419 (1995)

State v. Greenwold 189 Wis.2d 59, 525 NW2d 294 (1994)

State v. Hahn 132 Wis. 2d 351, 392 NW2d 464 (Ct. App. 1986)

State v. Huggett, 2010 Wis. App 69, 324 Wis.2d 786, 783 NW 2d 675,

Strickler v. Greenlee 527 U.S. 263 (1999)

United States v. Olano, 507 U.S. 725, 732 (1993)

FEDERAL CONSTITUTION

5th, 6th and 14th Amendments

STATE CONSTITUTION

Article 1 sections 1, 7, and

Other: Black's Law Dictionary 5th edition

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The issues presented by this appeal are Constitutional in nature , Therefore both oral argument and publication are recommended.

STATEMENT OF THE ISSUES

I. Whether the trial court erred when it chose to allow the case to move forward when the witness's properly served by Southeast Wisconsin Process LLC. Were not present , unknown to the defense , but known by the state.

ANSWERED BY THE COURT: NO

II. Whether the trial court abused it's discretion by not addressing McCarthy's multiple complaints about discovery violations regarding cell phone video that was very obviously altered by unidentified persons.

ANSWERED BY THE COURT: NO

III. Whether the trial court erred in not addressing McCarthy's multiple complaints of not providing the sign in sheet , and video from the date of his arrest .

ANSWERED BY THE COURT: NO

IV. Whether the trial court abused it's discretion by allowing impeached testimony uttered in open court by Abby Nichole too wit "sovereign citizen"

ANSWERED BY THE COURT: NO

V. Whether the trial court abused it's discretion under the Judicial code to allow a judge who's clerk is the Municipal Judge for the Village of Lannon

and holds a vested interest in this case , to steer the proceedings , and the outcome of said case .

ANSWERED BY THE COURT: NO

STATEMENT OF THE CASE

In the early evening hours of 1-19-2016 , I , Tracy McCarthy , (hereinafter McCarthy) was attending Lannon Municipal Court , Located at 20399 W. Main street Lannon ,Wisconsin .at approximately 5:00 o'clock I signed in and received a random number and was called back to a hallway about 12 feet from where I had entered the building , it is important to note this building is roughly 35 x 25 and is in fact a fire station converted to a court . After a brief conversation with the city attorney , later identified as Christopher Koehnke hereinafter Koehnke, I asked to review the statute for the first offense charged and the provisions of 344.65(1) (c) with what McCarthy claims to be understood as “anyone who has insurance in effect at the time of citation cannot be charged with the no insurance ordinance”which only makes perfect sense . This seemed to upset Kezeske and he approached McCarthy from behind and began offering legal advice in a violent manner , after which McCarthy stated “ I have a lot of questions , first question is is this a criminal or civil matter” to which Kezeske says , “it’s not a civil matter

it is a civil infraction” to which McCarthy says “ Civil?, then it must be dismissed due to lack of an injured party” to which Kezeske says “what are you taking about?” McCarthy states “anything civil has got to be dismissed due to...”and McCarthy is arrested . Blacks law dictionary 5th edition states “all that is required for an arrest is some act by officer indicating his intention to detain or take person into custody and thereby subject that person to the actual control and will of the officer” clearly McCarthy could not feel comfortable leaving with Kezeske standing over him talking down at him , And it is McCarthy's contention that , Koehnke could have diffused the situation immediately by simply stating “ lets send this to trial” he did not , and in McCarthy’s view is partially to blame for the unlawful arrest . After this incident , McCarthy ,

in the days that followed sent to Lannon Municipal Court a “NOTICE OF INJURY AND CIRCUMSTANCE” Pursuant to Wisconsin Statute section 833.80(1d)(a) dated 2-09-2016 and received 2-11-2016 . subsequent notices requested video , police complaint forms and other discoverable material in an informal manner , but clearly laying the groundwork for future litigation by defendant McCarthy . The sign up sheet was sent redacted of all contact information , and contained the indecipherable names

but not numbers, and the names of juveniles who are required by policy ,to have a parent or guardian present were completely redacted . (Lannon Website} , At this point I ask that you note that the Municipal Judge for the Village of Lannon is Mrs. Laurie Dutcher ,who also happens to be the clerk for the Judge in the above named case , and does not comply with the “arms length” required and in McCarthy’s opinion , she, as clerk, too should have dismissed herself from the case .

After numerous requests a video was finally produced on 9-6-2016 from a court attendee , Caily Kison started recording on her cell phone when Kezeske assaulted McCarthy , The Video was never made available to McCarthy , notwithstanding the lack of start and stop points , and appears to have been edited , Nevertheless McCarthy points out the remaining video totally contradicts , and shows the testimony of Chief Kevin A. Porter to be inaccurate at best , to wit , he never mentions Kezeske’s escalation of the events clearly visible in the Kison Video , and shows the complete disregard of actual content of the conversation , replaced by “his” version of events that he testified he “clearly” heard from 60 feet away , this grossly exaggerated statement is beyond ridiculous as this whole building is less than 60 feet long and that would place Porter , in the street in the north or

west or in the parking garage to the east or far into the parking lot to the east . Kezeskes Allegations of “threats” are unfounded and are not backed up by either video nor witness statements , notwithstanding his termination from the Milwaukee P.D for untruthfulness not once, but multiple instances . While conducting his Investigation Porter Contacted Nathan Jobe, (hereinafter Jobe} , Who claims “Then the lady called for Tracy , I remember his name because I leaned over and whispered to my daughter that maybe thats why he’s so upset all the time ,She said what?. And I said a boy named sue ? She still didn’t get it I guess because she’s only twelve.(R-2-pg.1-3) The main thing wrong with this statement is that Lannon Court uses a number system ,presumably to preserve anonymity , you sign in and are assigned a number , and for all intense and purposes are known by this number Jobe had no access to the sign up sheet , and could have ascertained McCarthy's name from a limited number of sources . On 9-14-2016 Tv6 now released a segment on Kezeske and now assistant Lannon Police Chief Steve Lesniewski , entitled “1/3rd of officers released from duty find jobs in other departments in Wisconsin” it goes on to spotlight Kezeske and Lesniewske’s Dishonesty ,it also should be noted they are not the only “bad Cops “ (R-19 1-

1) employed in Lannon , Christen Kaichlmier was part of a scandal in Fon Du Lac Wisconsin in 2014 (FDL Reporter 12-4-2014) and left that police department under less than honorable conditions , I only bring this up to point out the pattern and hiring practice of the Lannon Police Department.

ARGUMENT

1 . THE LOWER COURT ERRED IN PROCEEDING ,WHEN MCCARTHY'S WITNESSES WERE PROPERLY SERVED AND DID NOT SHOW UP FOR TRIAL

Witness's properly served and subpoenaed , and in fact , not present at trial , were required and are a basic requirement of both state and federal constitutions , and were known to be unavailable to all , with the exception of the defense , Virtually guaranteeing an unfair trial .

2 . THE TRIAL COURT ABUSED IT'S DISCRETION BY ALLOWING MULTIPLE CONTINUANCES , THUS DENYING MCCARTHY'S RIGHT TO A SPEEDY TRIAL

The State proceeded with constant delays and continuances , and various dilatory practices , until the defense , admittedly by it's own unfamiliarity with the process's of Court , forgot to Subpoena the arresting officer .

3 .THE TRIAL COURT ABUSED IT'S DISCRETION BY ALLOWING TESTIMONY FROM THE IMPEACHED ARRESTING OFFICER , KURT KEZESKE TO INFLUENCE THE JURY , The arresting officer , too wit, Kurt Kezeske , was allowed to testify , by words he said in his report (The porter complaint R-pg-1) "sovereign Citizen" even though , he had in fact been impeached.

4 . THE TRIAL COURT ABUSED IT'S DISCRETION BY ALLOWING MULTIPLE DISCOVERY VIOLATIONS , The State had never produced , and in fact has never produced an sign in sheet for the defense to gather witness's that was clearly legible and not redacted , even though in their exclusive possession. The report of Kezeskes Firing by Milwaukee Police Chief Ed Flynn , was never provided until McCarthy in fact , sent a copy to Assistant District attorney Abby Nichole trying to get information.(R-No.15-1-2)

5 .THE TRIAL COURT ABUSED IT'S DISCRETION BY NOT ALLOWING THE T.V.6NOW VIDEO OF KURT KEZESKE INTO THE RECORD The altered video has never been produced .

6 . THE TRIAL COURT ERRED BY ALLOWING A CONFLICT OF INTEREST TO OCCUR WHEREAS THE JUDGES CLERK HAD A

DIRECT INTEREST IN THE OUTCOME OF TRIAL .

McCarthy almost since the beginning , has asked the Judge for his disqualification ,(R-12-1-1) on the grounds that his clerk , Laurie Ducher , which he has presumably daily interactions ,is the magistrate for the Village of Lannon , and Knew that litigation was inevitable , by way of the notice of injury and circumstance . And the Judges past disciplinary measures , for cause , and delays. (Judicial conduct panel 4-6-1994) which McCarthy feared from the start as evidenced by his contact with the chief judge and the Judicial commission , To allow the case to proceed after the video , which any competent person can see , is completely contrary to the testimony of both Kezeske and Porter, is a miscarriage of justice ,and should be in the record . All witness's contacted by Porter need to be brought to court to answer for their statements under oath , the apparent firing of Kezeske needs to be addressed via the closed door session , in Lannon , which dismissed him ,as it shows a clear indication of “ mens re” and should have been allowed at trial . All the people standing in the hall need to be summoned , along with Kohenke , and people immediately after Kisons place on the sign-up sheet

CONCLUSION

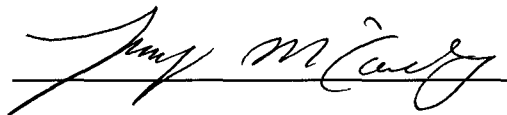
Kezeske's absence from the proceedings severely prejudiced McCarthy's right to due process ,via the confrontation clause of both the State and Federal Constitutions , The Video , even in it's altered state , proves beyond all doubt , that all complaints by police , and all statements by witness's are without merit , Withholding the video from McCarthy has crippled the right to present a defense. Proceeding with the trial , in absence of all properly subpoenaed witness's and discovery is contrary to fundamental fairness , and State and Federal Constitutions . Defendant/Appellant respectfully requests Reversal and Dismissal in the interest of Justice , due to spoliation of evidence either by negligence or design , bought on by dilatory tactics employed by State and local actors . Or , remand and retrial in which all witness's be present including , But not limited to Kezeske and Jobe , I also request . In the event of a retrial that all discovery requests be honored

including video , preservation letters ,etc .One copy of “1/3rd of police officers discharged from duty get new police jobs in Wisconsin” is provided to the Court , I have already sent copies to the state before the trial . Additional copies can still be viewed on tv6now’s website , the way Kezeske came to be employed by Lannon Police department is somewhat of a mystery to me after Chief Edward Flynn terminated him , It appears his relationship with Chief Kevin Porter Stretches back to the early 90’s when they were both employed by The Milwaukee Police department , 749 state street Milwaukee Wisconsin ,

McCarthy asked for all video in early February and was told by Lannon Municipal court that none was available , however approximately 7 months later , on September 6th , a edited version of a video is provided , with no start or stop that is common with cell-phone videos . The court , to be sure , knows the legal significance of this so I will leave it at that . However , Both State v. Greenwold 189 Wis.2d. 59, 525 NW2d 294(1994), And State v. Huggett, 2010 Wis. App 69, 324 Wis.2d ,786. 783 NW 2d 675, , provide that all relevant evidence must be preserved even , as in this case , it rests with a third party .

And it cannot be overstated , that Video of the actual crime , if there ever was one , is of the “ apparently exculpatory” nature . The Video that remains clearly shows Chief Kevin Porters , and Kurt Kezeske’s Complaints to be fictitious , maybe even Perjury . A true finder of fact can come to no other conclusion . The coerced Testimony of Nathan Jobe shows evidence of witness tampering , and may be the reason Jobe could not be found for Court . Severe Brady violations can be found throughout this case , McCarthy’s right to present a defense has been hampered by the Courts decisions not to compel discovery , not to compel , witness’s , and complete disregard for a fair and speedy trial asked for at the beginning and throughout the proceedings , Even though no Miranda warning was ever given , the trial court allowed use of Defendants statements . For all the reasons listed above Defendant – Appellant requests reversal and dismissal , with prejudice , or at the very least a new trial , with the power to compel witness’s on his behalf .

Respectfully submitted

A handwritten signature in cursive script, appearing to read "Tracy McCarthy", written over a horizontal line.

Tracy McCarthy

10 9 2016

CERTIFICATE OF LENGTH

I hereby certify that this brief conforms to the rules contained in s.809.19(8) (b) and (c) for a brief and appendix produced with a [mono spaced] [proportional serif] font. The length of this brief is 6 pages , 2650 words , Characters including spaces 16,762 , and without spaces 12,856 ,this brief was prepared using Libra office software , and a century schoolbook font

I Affirm all above to be true to the best of my knowledge

Tracy McCarthy 10-10-2018



A handwritten signature in cursive script, appearing to read "Tracy McCarthy", is written over a horizontal line.