

Wisconsin Court of Appeals
District III

state of Wisconsin plaintiff-respondent
v.

Kevin Wilke defendant-appellant

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OF WISCONSIN

Court Case # on Appeal
2020-AP-1068-CR

- Pro Se Kevin Wilke
- Reply Brief of Appellant -

Brown County, Honorable Timothy A. Hinkfuss

Kevin Wilke 125240
Kettle Moraine Correctional Inst.,
P.O. Box 282
Plymouth WI 53073

Dated = 7 - 18 - 2021

- Re Argument -

Page 4 Mr. Hattkes' Brief

(1) Wilke has forfeited his objection to the timing in which he received discovery materials in this case, because this argument was not properly preserved during trial or raised during Wilke's post-conviction motion.

The Issue of Discovery was brought up for the first time on 9-9-2019. The date trial was set for, I explained my papers were at home I was just put in Jail 3 days ago. I had no access to discovery and was not sure if the D.A. has more because I was picked up at her office supposedly picking up more discovery. Instead I was put in Jail. I also brought this same issue up in the form of a (Bond reduction motion) on 10-24-2019 - 10-31-2019, and 11-6-2019 all stating I need access to my discovery to prep for this trial all sent to the courts and District Attorneys office for filing.

As the D.A. Ms. Hardtke wrote in her brief page(s) and I stated in court I quote (in part)

I ended up getting discovery last night and was able to go out of my room last night to listen to the 911 tape. (first time) but was unable to get the law I need for this motion. (Motion Before trial.)

after my motion to the court about the issues I seen up front. The

Judge stated page 88 Then Mr Wilke

I'm confused as to what the nature of your motion is but if its a motion

for dismiss or adjournment I'm going to deny the motion. So I Kevin

Wilke did bring these issues up before trial no matter how unartfully

due to my lack of experience and as I stated had no time or access to

law books to write a proper motion to dismiss or adjournment. That is

5 times before trial I bring up discovery. Yes I agreed to

stand Pro Se after my motion was denied. I needed and have

that motion on file before trial

unlike Mr Hardtke feels I did not,
also I did bring these issues up to
the Court Circuit and Appeals dealing
with discovery late issues, in
my motion for Postconviction Relief
filed with the Circuit Court and
Court of Appeals dated 12-6-2019
and again 2-2-2020 I filed
another one and included a copy
of the first one with it, then
again on 6-5-2020 to the
Court of Appeals and Circuit Court
because we were having communications
problems due to Covid-19 and
was unsure if first motion
was reviewed. So AS Mr Hardtke
feels I forfeited my right to Appeal
this discovery issue under Hopper
v. City of Madison 79 Wis 2d (1977)
I fully complied and brought issues
to court's attention in Trial and
After in Postconviction motion.
under 971.23 Discovery and inspection
upon demand the district attorney shall
within a reasonable time before trial
all evidence from (a) to (h)

Bottom line Due Process was not satisfied here. Discovery Given at 6:30 P.M. night before trial spent half my free time listening to 911 tape had no opportunity to compare Discovery with case law or statute or even fully process its content. As we have held previously the standard to be applied in determining whether the delay in disclosure violates due process is whether the delay prevented defendant from receiving a fair trial.

U.S. v. Allain 7th Cir 1982 (Fed.)

page 9 ms Hardtke's Brief
 (1) Wilke had sufficient opportunity to confront N.V. as a witness and her testimony was properly admitted and considered by the jury.

N.V. did not even remember the night in question or giving the officer a statement until read to her and she saw her name, and still did not remember the night only what she was told and or read. 160 — 176 — first day trial 171 N.V. stated dan remember even signing statement

First Day 175 Denide right to ask N.V.
 about self harm only day in
 question she don't remember
 date in question.

First Day 174 state objects to asking
 about drinking can only ask
 about day in question
 over and over I was Denide questioning
 N.V. on the stand. Once again
 I look at U.S. V. Lowe 329 F3d
 981 (2003) In conclusion only one
 witness - Thomas stated that he actually
 observed lowe possess a firearm lowe
 was bond from pursuing a line of
 questioning into this critical witness's
 impaired memory This limitation
 Denide lowe his Constitutionally -
 Guaranteed right to effectively cross
 examine Thomas and we cannot
 definitely state that this Denide did
 not contribute to the verdict obtained.
 This case and witness did not even
 remember the night in question and
 I was only allowed to question the
 night in question. I was Denide
 my constitutional right to cross
 examination, in lowe the
 witness remembered seeing him

with the Gun but had a history of forgetfulness.


Ms Hardtke knew her witness did not remember. I asked repeatedly if there was an issue with her witness testifying 125-126 first day again 151 first day and page 31-32 first day as well before witness testified or tried to. I would have never admitted hearsay evidence in to that court room if I knew the only witness to the evidence did not remember. (Delayed disclosure alone does not in of itself constitute a Brady violation; instead the disclosure must come so late as to deny the defendant effective use of the evidence during the relevant proceeding) United States v. Berr 9th Cir 2020 again in U.S. v. Estell 7th Cir 2016 (Brady only required that Government disclosure sufficiently in advance for effective use by the defendant.) I and the court had a right to know the states only witness to the event did not remember ✓

before giving evidence to the jury an of asking for a evidentiary hearing outside the jury to sort out her memory if any.

So the state was able to use this forgetful witness to bring in evidence to try and form a new opinion without no personal knowledge of or memory of. (as in was there communication) unprepared tainted jury right off and I objected over and over first day trial 128. - So without a doubt, this not knowing until the witness (was on the stand hurt the defence completely and tainted the jury.)

page 12 of Ms Hardtke's Brief
The Totality of the evidence in this case is sufficient to uphold the Jurys verdicts on count 2, 3 and 4) without the hear say evidence and denying me proper cross-examination there was is no evidence against me no witness no warm car, no collaborator and my guilt what so ever

all evidence that would have
proved it was, and there was
not looked into which deprived
me due process of law under
5 and 11 US Constitution.
I had nothing to defend against
under US Constitution sec 7
I had nothing to go off or did
the state but they were able
to mold a case out of denial
of evidence timely and cross
examination. This was a botched
investigation and I paid for it.
I demand a new trial on this case
to be thrown out never to be tried
again Thank you

Dated 7-18-21 
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