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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

State of Wisconsin, Plaintiff-Respondent,

V

Appeal No: 2021 AP 1636-CR
(Price County Case No. 18 CM 120)

Richard A. Hoeft, Defendant-Appellant

ON APPEAL FROM A DENIAL OF A POSTCONVICTION MOTION ENTERED IN PRICE COUNTYCIRCUIT COURT, ON AUGUST 24th , 2021, HONORABLE KEVIN KLEIN, PRESIDING

DEFENDANT-APPELLANT'S REPLY BRIEF

Submitted by: Richard Hoeft
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ARGUMENT

Because the Plaint-Respondent failed to refute the following arguments, they waived those arguments. That is because arguments that are not refuted, are deemed admitted. Charolais Breeding Ranches ltd. V FPC Securities Corp. 90 Wis 2d 97, 109-110 (Wis App. 1979).

They are, and I will address them in order:

1. should the 5th Amendment right to counsel, and the 6th Amendment right to counsel be tantamount to each other.

2. When is it to late for a pro se litigant to ask for an attorney, prior to trial.

3. That the Circuit Court violated Defendant-Appellant's rights when it denied Defendant-Appellant's motion for a continuance.

4. That the real controversy was never fully tried, and that the cumulative effect of the violations requires reversal.

5. The Plaintiff-Respondent also failed to mention insufficient evidence to convict. But Defendant-Appellant concedes that neither party has to.

Defendant-Appellant argues that three weeks prior to trial was very sufficient to put the court on notice that I wanted an attorney. It wasn't the 11th hour. Also, in May of 2019, Judge Klein stated on the record that he would go over the waiver of counsel at each hearing up to the trial. (Defendant-Appellant's brief at page 5-6). Defendant-Appellant took Judge Klein at his word, and was under the impression that as long as he didn't wait til a week before trial, defendant-Appellant would have the right to an attorney.

As far as Defendant-Appellants motion for a continuance argument, had the Circuit Court granted Defendant-Appellant's motion, and rescheduled the trial, Defendant-Appellant woud have found the forged credit card receipt and would have been able to impeach State's witness Rachel Livingston. After all, she testified that she didn't steal any money. (Jury Trial, page 68). When in fact she did. (Defendant-Appellant's Appendix At 3). Defendant-Appellant should have had that exculpatory evidence so he could effectively cross examine Livingston. Also, the jury should have heard that evidence when they were making their decision.

DEFENDANT-APPELLANT WILL NOW ADDRESS PLAINTIFF-RESPONDENT'S REPLY BRIEF.

1. THE TRIAL COURT VIOLATED DEFENDANT-APPELLANT'S RIGHT TO COUNSEL.

Defendant-Appellant put the Circuit Court as well as the state on notice, 3 full weeks before the trial that he wanted an attorney. The Circuit Court told Defendant-Appellant that it wasn't going to adjourn the trial. The trial went on as planned. If the Circuit Court was correct in its analysis, the why did he tell defendant-appellant at at postconviction hearing on staying the jail sentence on March 20th 2020, the following:

> Mr. if you would have come to the sentencing hearing, and stated that you wanted a continuance, so you could get an attorney, I would have been obligated to continue the case, so you can get one. Defendant-Appellant's brief at page 6.
>
> Further, If the Circuit Court were correct in its analysis, then why did it continue the 18CF90 case. Same facts, same everything. 3 weeks before the trial and everything. A Circuit Court makes an erroneous exercise of discretion, when it makes a ruling in the absence of evidence to back it up.

The two cases that Plaintiff-Respondent cites in his brief, deal with defendant's that can't get along with their attorneys, terminated the representation, and tried to get another attorney. That's not the case here. Defendant-Appellant never had an attorney in this case. This would have been his first attorney. The 6th Amendment of the Federal Constitution guarantees the right to an attorney. See also: Gideon v Wainwright, 372 US 335 (1963).

I happen to think that Judge Klein is a good judge. That's why Defendant-Appellant didn't substitute him. But the Loose Cannon tactics in this case, deserve another bite at the apple.

II. THE STATE DID, IN FACT VIOLATE DEFENDAT-APPELLANT'S DUE PROCESS RIGHTS, BY ASKING THAT DEFENDANT-APPELLANT BE HELD IN CONTEMPT 20 MINUTES BEFORE THE START OF THE JURY TRIAL.

The reason, that the Plaintiff-Respondent's actions violated the Defendant-Appellant's due process rights, is because Judge Klein stated that he would entertain Plaintiff-Respondent's motion at a later date. Defendant-Appellant took that as a message that if he won the trial, Defendant-Appellant would be collared for contempt of court.See: State v Lettice, 221 Wis 2d 69 (Wis. App 1998).

III. THE PLAINTIFF-RESPONDENT DID IN FACT VIOLATE DEFENDANT-APPELLANT'S SIXTH AMENDMENT RIGHTS WHEN THEY DIDN'T GIVE DEFENDANT-APPELLANT THE DISCOVERY UNTIL THE EVENING BEFORE THE TRIAL.

As Defendant-Appellant stated earlier, Plaintiff-Respondent failed to address the continuance prong of this issue. Defendant-Appellant reargued that earlier in this brief. Defendant-Appellant will now argue the discovery violation.

Plaintiff-Respondent attempts to end run the Court of Appeals, by stating that these said documents were "Additional Discovery". Plaintiff-Respondent's argument is disingenuous at best. Or an outright lie.

A discovery motion was filed by Defendant-Appellant in May of 2019. The discovery motion asked for a copy of all motel receipts for the times Defendant-Appellant stayed at the motel. The motel owners, who are claiming to be the so called victims in this case had those documents the whole time. Even the one that was forged. Defendant-Appellant argues that the discovery was in the states possession from the time the complaint was filed. The State of Wisconsin was the so called victims attorney.

The Sixth Amendment states that a criminal defendant has the right to confront their accuser. The defendant cannot confront the State of Wisconsin, because they are an entity. Said differently, there isn't anybody named "State of Wisconsin". Therefore, if the motel people get the benefit of getting the State to represent them, then the Defendant-Appellant should have the benefit of getting the discovery in a timely fashion. Something that Legislature, and the constitution already guarantees. (See Wis. Stat. 971.23; US Constitution, Amendment 6). See also, Brady v Maryland, 373 US 83 (1963), and its US and Wisconsin progeny.

Even if Plaintiff-Respondent, and the Circuit Court had a predetermined mind that Defendant-Appellant was guilty[1],[2] guilty men still get fair trials. State v Weber, 163 Wis 2d 116, 146-147 (J. Abrahamson, dissenting opinion). Defendant-Appellant still had the procedural and substantive due process right to evidence favorable to his defense. And that doesn't mean on the evening before the trial. I had a Constitutional and Statutory right to those documents within a reasonable time before trial.

Plaintiff-Respondent never argued a single Appellate case during this issue. Other than the de novo review standard case. Probably because he could not find a case that deals with the issue of giving a defendant the discovery on the evening before the trial. And neither could Defendant-Appellant for that matter. That is probably because most prosecutors have more on the ball than this.

The only have hearted argument that the Plaintiff-Respondent gives is "we received it on October 2nd, and mailed it on October 3rd". That argument fails, and heres why. Plaintiff-Respondent doesnt provide an envelope, or anything showing that's what happened. Judge Klein sided with the prosecution (no surprise there) even though Plaintiff-Respondent showed no evidence to back up his claim. An erroneous exercise of discretion exists when a Circuit Judge makes a ruling for one side, over the other, in the absence of evidence to back up his decision.

Defendant-Appellant should have been able to test the credibility of the state's witness with the forged credit card receipt. And the jury should have been allowed to use that exculpatory evidence in making their decision.

Defendant-Appellant cannot find any legal authority on what constitutes a "reasonable time". And if so,i would be willing to bet the farm that it is not on the evening before the trial.

Further, as Defendant-Appellant stated to the Circuit Court on the morning of the trial, that he could not represent himself to the best of his ability. But that argument fell on deaf ears as well.

A pro se defendant, is actually half defendant, and half attorney. If Defendant-Appellant was represented by an attorney, and the attorney received the discovery on the evening before the trial, the attorney would have simply said to the Circuit Court, that he couldn't represent their client to the best of their abilities. And the Circuit Court would have been duty bound to grant a continuous. Then why isn't it the same standard for a pro se defendant.That wanted an attorney.

IV. THE PLAINTIFF-RESPONDENT VIOLATED DEFENDANT-APPELLANT'S RIGHT TO

[1]It would be contrary to American Jurisprudence, as well as the Rule of Law for a Judge or a District Attorney to "rig" a trial. (although the two came very close in this case).

[2]See Operation Greylord, which was an FBI joint operation, where a total of 92 officials in Cook County Illinois were indicted and most convicted on corruption, and rigging trials. (17 judges, 48 Lawyers, 18 police officers, 8 court officials, and 1 state legislator).

A FAIR TRIAL, AS WELL AS DESTROYED THE PRESUMPTION OF INNOCENCE OVER THE REMARKS DURING OPENING AND CLOSING STATEMENTS.

During the opening statements, the Plaintiff-Respondent stated that I was arrested and jailed on the charge that I was on trial for.

There's a reason that Prosecutor's can't say that the Defendant-Appellant was in jail, or criminal defendant's can't be in Jail clothes at a trial. Because it violates due process, and puts guilt in the jury's eyes.

The problem here was that Defendant-Appellant wasn't arrested or in jail. That's the problem. The Plaintiff-Respondent lied. Not only did he violate Defendant-Appellant's rights, but he lied when he said it.

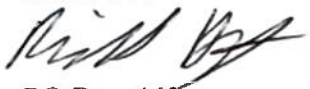
As far as the remarks at closing arguments, at the time I wrote my brief, the Hoyle case wasn't unpublished. It had just came out. It appears that it is an unpublished case. Defendant-Appellant argues that the prosecutor in the Hoyle case, said the same words as Plaintiff-Respondent did in this case. I fail to see how Hoyle can get his case reversed, but Defendant-Appellant can't. The only difference is that Hoyles attorney objected, and Defendant-Appellant didn't. However, it wasn't my choice to go to trial without an attorney. Defendant-Appellant asked on September 19th 2019, and October 9th, 2019 for an attorney, but the requests fell on deaf ears.

CONCLUSION

Based on the foregoing, Defendant-Appellant Respectfully Requests that this Court REVERSE the Judgement of Conviction, and VACATE the sentence.

Dated this 25th day of October, 2022

Thank You



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