

State of Wisconsin

Supreme Court

Case No's.: _____

State of Wisconsin

Plaintiff,

v

Michael Van Caster

Defendant,

FILED
FEB 26 2018
CLERK OF SUPREME COURT
OF WISCONSIN

PETITION FOR REVIEW

Fox Lake Correctional *Institution*

P.O. box 200

Fox Lake, Wi. 53933

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PETITION FOR REVIEW

I Michael Van Caster appellant, hereby petition the Supreme Court of the State of Wisconsin, pursuant to Wis. Stat. § 808.10 and Wis. Stat. § (Rule) 809.62 to review the decision or order of the Court of Appeals, District III - II, in State of Wisconsin V Michael Van Caster, Case No's.: 2016 AP 1482 CRNM, 2016 AP 1483 CRNM, filed on January 19, 2018.

TABLE OF AUTHORITIES

State v Jorgensen, 2008 wi 60

State v Fortier, 2006 wi App 11

State v Sutton, 2012 wi 23

State v Evans, 2004 wi 84

State v Bobby g (in Re Marquette S.) 2007 wi 77

State v Jordan, 2013 wi App 94, 349 wis. 2d 524, 835 N.W. 2d 290, 2013 wis. App

ISSUES PRESENTED FOR REVIEW

1): Wouldn't it be detrimental and harmful to the Defendant's case when the trial Attorney withholds evidence from the Court such as: the State's primary witness changing her seating position three separate times during her initial interview based upon the lead Detective's statements of disbelief?.

2): Wouldn't it be detrimental and harmful to the Defendant's case when the trial Attorney withholds evidence from the court such as: the State's primary witness changing the time of duration of the alleged crime based upon the lead Detective's statements of disbelief?

3): Wouldn't it be detrimental and harmful to the defendant's case when the trial Attorney withholds evidence from the Court such as: the State's primary witness admitting to not only herself, but the Defendant's sibling's repeatedly contacting law enforcement agencies for numerous unsubstantiated claims?

4): Wouldn't it be detrimental and harmful to the Defendant's case when the trial Attorney withholds evidence from the Court such as: she and the rest of the Defendant's siblings harbor an extreme, long term dislike (hatred) toward the Defendant.

5): Wouldn't it be detrimental and harmful to the defendant's case when his trial Attorney evidence from the Court that the State's primary witness closed her initial interview by answering the lead Detectives question concerning the primary witness having any prior or present reason to lie about the statement that she just gave as "no I have no reason to lie about this" right after admitting that she and the Defendant's other siblings have made numerous unsubstantiated calls to law enforcement agencies concerning the Defendant over a period of time?.

6): Wouldn't it be detrimental and harmful to the Defendant's case when his trial Attorney withholds evidence from the Court such as the State's Secondary Witness making a statement to the lead Detective concerning her lifelong belief and feeling of the Defendant being quote "the lowest snake in the grass that deserves to be locked up" end quote to the lead Detective upon her opening her door to him?.

7): Wouldn't it be detrimental and harmful to the Defendant's case when the Defendant's trial Attorney withholds evidence from the Court concerning the State's secondary witness claiming that the Defendant allegedly repeatedly rode a mountain bike to the park to watch kids swim in the pool when it can be proven not only medically, on payment receipt, on food pantry records, by multiple witnesses, along with the fact that it was winter time outside when these alleged actions supposedly took place?.

8): Wouldn't it be detrimental and harmful to the Defendant's case when his trial Attorney fails to raise the fact in Court that the State's secondary witness claimed to be seated in a chair that was later verified under oath by the State's third witness as being reserved for her husband only during family gatherings due to his medical condition rendering that particular chair as being the only place in the house that her husband can sit?.

9): Wouldn't it be detrimental and harmful to the Defendant's case when his trial Attorney failed to not only point out the false statement by the State's secondary witness of her alleged seating position while under oath but to also use the State's own diagram of the Secondary witnesses false claim and the State's third witnesses claim while under oath to show that the State's second witness had indeed made a perjurious claim to the Trial Court?.

10): Wouldn't it be detrimental and harmful to the Defendant's case when his trial Attorney withholds evidence from the Court concerning the State's second witness statement concerning the Defendant's siblings harboring an extreme, lifelong hatred toward the Defendant and there continuous attempts since the Defendants age of (16) to have the Defendant locked up in prison by repeatedly calling law enforcement and not being capable to have the Defendant locked up due to there never being evidence to support their claims?.

11): Wouldn't it be detrimental and harmful to the Defendant's case when his trial Attorney withholds evidence from the Court concerning the State's third witness stating to the lead Detective during her initial interview that the State's

second witness quote "is known to embellish any story to any degree in order to achieve her desired goal and not to put to much stake into what she says because she (the State's second witness) cannot be trusted"?.

12): Wouldn't it be detrimental and harmful to the Defendant's case when his trial Attorney withholds evidence from the Court such as the State's third witness making a statement concerning Theresa Cisler "bragging to her about how much she loved our sexual activities during our marriage" which would have proven that Mrs. Cisler partially perjured herself upon the stand while testifying?.

13): Wouldn't it detrimental and harmful to the Defendant's case when his trial Attorney suppresses evidence from the Court concerning the State's third witnesses statement of the green recliner located by the patio door being reserved for her husband due to his medical condition and that he is the only person who sits in that particular chair due to his medical condition which in turn would have proven that the State's second witness had perjured herself?.

14): Wouldn't it be detrimental and harmful to the Defendant's case when his trial Attorney withholds evidence from the Court concerning the State's third witness making a statement during her initial interview concerning herself and the Defendant's other siblings making numerous unsubstantiated calls to law enforcement over the years attempting to get the Defendant incarcerated?.

15): Wouldn't it be detrimental and harmful to the Defendant's case when his trial Attorney withholds evidence from the Court concerning that (9 out of 12) witnesses (including the alleged victim) present at the time of the alleged crime not only gave the lead Detective verbal but also written statements stating that they had (A) never had the Defendant inappropriately touch her, (B) they not only never witnessed the alleged crime occur, nor have they ever witnessed or heard of the Defendant inappropriately touching any person?.

16): Wouldn't it be considered tampering with a witness when a Brown County Department of Family Service Worker not only made the following quote to the alleged victim's mother during her initial interview quote "Amber if you do not stop lying to protect your dad and tell us what we know is the truth we are going to consider you a threat to your kids and take them away" end quote but then actually followed through with the threat when the defense witness

answered with quote "I have been telling you the truth and I am not going to change my story because then I'd be lying and I'm not going lie for you" end quote?.

17): Wouldn't it be classified as tampering with a witness when the alleged victim makes the following direct quote when asked by Stacy Krietz (child forensic interviewer), during the initial interview, if anyone had discussed with her (Alexandria) why she was there that day before her arrival there quote "yea the foster mother told me all about it while on our way here" end quote?.

18): Isn't it against the law to enter the alleged coconspirator's statement into evidence after the alleged coconspirator had already requested an attorney be present during her initial interview and one was never provided especially when the Lead Detective openly admits to the alleged coconspirator's request was unknown until the time of review to prepare the written statement due to a police error in communication between the female detective and the lead detective?.

19): Isn't it against the law for the District Attorney to make false statements to a Court such as stating that the alleged coconspirator walking into her agents office earlier that morning and alleged stating that she was no longer intending to testify at all and that she (the alleged coconspirator) was in the Courtroom audience illegally, both proven to be false claims by the Court?.

20): Wouldn't it be classified as Intimidation of a Witness when the District Attorney gets caught giving false statements to the Court such as when District Attorney Lemkuel stated that the Coconspirator Melanie Boone was not only allegedly in the Courtroom during my hearings illegally when in fact Ms. Boone had been granted authorization by Judge Kelly to be there and also that Ms. Boone allegedly walked into her agent's office earlier that day and stated that she was no longer going to testify at my trial at all when in fact she informed her agent that's she was going to testify to the truth and quote "not what that fucking bitch over there is trying to make me say" end quote while pointing directly at A.D.A. Lemkuel?.

21): How can a District Attorney and a Court find a Defendant guilty of Conspiracy Party to the Crime of Intimidation of a Witness when not only has

the Lead Detective and Court Commissioner Paul Burke stated that the State has failed to meet all five corners of intimidation?.

22): What are the laws surrounding and governing a lead Detective intentionally using his knowledge of Ms. Boone's multiple psychological disorders to intimidate her during not only her initial interview but also during her testimony under oath such as causing Ms. Boone to suffer a psychological, physical and verbal outburst upon the stand and screaming at Judge Walsh quote "get that son-of-a-bitch out of this courtroom" end quote?.

23): What is the legal precedence surrounding an Expert Witness for the State basing her entire testimony upon nothing except her education not interviews of the alleged victim, witnesses present at the time of the alleged crime or even reviewing any evidence?.

24): Doesn't the Defendant have a legal right to have an Expert Witness testify upon his behalf when the State hires one?

25): When the Defense Attorney motions the Court for the appointment of an expert witness isn't the Court obligated to allow the Defense Attorney more than (6) business days to obtain funding for said witness instead of dismissing the motion simply because the Defense Attorney is still awaiting an answer from the S.P.D. concerning the funding of said witness?

26): Wouldn't it be considered Ineffective Assistance of Counsel for the Defense Attorney to just simply put up no argument in the Court's decision to dismiss the motion for an Expert Witness?

27): Wouldn't it not only be considered a conflict of interest to have the Defendant's case be heard by the same Court Commissioner (Jane Sequin) that had engaged the Defendant into a screaming match roughly a year earlier during the Defendant placing a restraining order against Ms. Boone but also wouldn't be illegal for the same Court Commissioner (Jane Sequin) to hear the latter case?.

28): What are the laws surrounding and governing Court Commissioner Jane Sequin admitting to knowingly, willfully and intentionally committing a crime

during the Defendant's Preliminary Hearing such as the Defendant's Attorney Lenard Kachinski making the following direct quote to Commissioner Sequin quote "Your Honor you can't do that don't you realize that by doing so you yourself are breaking the law" end quote and Commissioner Sequin responding with quote "This is my courtroom and I can and will do anything thing that I want" end quote?.

29): Wouldn't it be detrimental and harmful to the Defendant's case when his Attorney withholds evidence from the Court such as the lead Detective giving only one repeated statement under oath during the Defendant's Preliminary Hearing quote "I have no evidence against the Defendant" end quote?.

30): How can a Trial Court find the Defendant guilty and convict him after the District Attorney makes the following direct quote during closing arguments of the trial quote "Your Honor when it comes to Count (1) sexual contact with a child under the age of (13) the State must concede that the State has no evidence and no actual crime committed, when it comes to Count (3) the State must concede that the State has no evidence no actual crime committed, when it comes to Count (4) Conspiracy Party to the Crime of Intimidation of a Witness the State must concede that the State has no evidence no actual crime committed but may the State remind this Court that under (2 inaudible statutes) the State does not need an actual crime committed just the thought of intent and the State believes that we have proven beyond all shadow of a doubt that the Defendant was intending on committing a crime" end quote?.

31): How can the Presiding Judge (Thomas Walsh) not only convict a Defendant but sentence him after making the following direct quote during the sentencing hearing quote "Mr. Van Caster it is this Court's duty to inform you that my decision here today is not based upon the original reason that brought you into my Courtroom because there is no evidence to support it my decision here today is based solely upon your character, your actions in my Courtroom and your blatant disrespect for the law --- oh and yes the little bit of evidence that was given by your family and Ms. Boone?.

32): What is the legal precedence governing a presiding Judge (Thomas Walsh) repeatedly refusing to allow the Defendant place an objection to the statements that the Defendant cannot make his Attorney make?

33): Wouldn't it be detrimental and harmful to the Defendant's appeal when the Defendant's Appellate Attorney continuously refuses to gather evidence and verify claims that the Defendant continuously insist will prove his innocence and wouldn't this also be considered Ineffective Assistance Of Counsel?.

34): Wouldn't it be considered to be a miscarriage of justice when both the Defendant's Appellate Attorney and the Appellate Court fails to allow the Defendant gather and enter evidence into Court that the Defendant claims will prove all of his claims as fact beyond all shadow of doubt?.

35): Wouldn't it be considered detrimental and harmful and also Ineffective Assistance of Counsel when one the Defendant's Trial Attorney is certified as an Estate, personal Injury and Insurance Attorney along with the Defendant's Appellate Attorney being certified as a Divorce, Personal Injury and Probate Attorney?

STATEMENT OF THE FACTS OF THE CASE

This case concerns the charges against the Defendant of his alleged crimes of Count (1) Sexual contact Child Under The Age of (13), Count (2) Felony Battery, Count (3) Intimidation Of A Witness, Count (4) Conspiracy Party To The Crime Of Intimidation Of A Witness.

I the Defendant have filed numerous Motions of Discovery with both the Trial Court and the Appellate Court on the premise that contained within each and every Discovery Material listed has undeniable, undisputable evidence supporting not only the Defendant's claims of the statements that have been made by the Witness for both the State and the Defendant, The Prosecutor, Judge and Court Commissioners, Attorneys and procedural processes but also the innocence of the Defendant. The Defendant by the directive of Judge Walsh has also filed a motion to Correct the Record with the Appellate Court unknowingly that this filing was supposed to be directed to the Trial Court instead.

The Defendant's trial Attorney withheld evidence on multiple levels throughout the hearings and trial were the State's witnesses give statements that prove beyond all shadow of a doubt that they and their testimonies are not

credible and should have never led to the Defendant's arrest let alone conviction.

9 out of 12 witnesses present (including the alleged victim gave both verbal and written statements that they had (A) never experience any form of inappropriate contact from the Defendant, (B) they have never in the Defendant's lifetime witnessed or experienced any inappropriate contact upon the behalf of the Defendant.

The Defendant has repeatedly filed numerous Motions of Discovery with the Trial Court and the Appellate Court claiming that the specified and exact discovery materials listed within the Motions will undeniably prove the Defendant's innocence and all other claims to be factual.

ARGUMENT

The Defendant has continuously stated from the beginning that I the Defendant have compiled hour, minute, second, word for word, person by person transcripts of each and every initial interview and evidence contained upon the original discovery disc that have been supplied to the Defendant during the duration of the Defendant's incarceration. All of the Defendant's claims are contained upon said disc's and the Defendant can and will not only prove that all (3) of the State's witness (Ellen Kosmoski, Lylas Jefalone, Barbara Hirssig) have each given verbal statements concerning their numerous false allegations toward the Defendant in the past, their multiple inconsistencies concerning the duration of the alleged crime, and Mrs. Hirssig's claim that Mrs. Jefalone is "known to embellish any story to any degree in order to achieve her desired goal", along with the Lead Detective's obvious leading of the witnesses through his verbal comments of disbelief for their prior claim.

The Defendant request that the Circuit Court grant his Motion to Correct the Record Dated February 11, 2018 in its entirety as outlined in the Motion. The Defendant also request that the Wisconsin Supreme Court grant the Defendant's Motion of Discovery in its entirety as it is itemized within the Motion in order to allow the Defendant his legal right to adequately compile the Defendant's defense in this matter.

Dated this 8th Day of February, 2018.

Michael Dan Pastor

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CONCLUSION

For the various reasons set forth above in this Petition For Review the Defendant is confident that this Court will find reason to allow the Defendant to move forward with another trial and that this Court will allow the Defendant's Motion of Discovery to be granted in its entirety in order to not only allow the Defendant to compile the necessary evidence to sufficiently defend himself from the charges.

Dated this 8th day of February, 2018.



Mr. Michael J. Van Caster

APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains as a minimum: (1) a table of contents; (2) the findings or opinions of the Court; and (3) that portions of the record essential to an understanding of the issues raised are in dispute of accuracy and the exhibits that I have submitted to the Court of Appeals are being retained by said Court although the Defendant has requested that the Exhibits be returned to the Defendant immediately due to the fact that said Exhibits are the only and original copies of said Exhibits that the Defendant had for the Defendant's personal records.

I further certify that this appeal is taken from the Wisconsin Appellate Court order or judgment entered in a judicial review of administrative decision, the appendix contains the findings 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 of person, specifically including juveniles and parents of juveniles, with the notation that the portions of the record have been so reproduced to preserve the confidentiality and with the appropriate reference to the record.

I swear under penalty of perjury pursuant to Carter V Clark 616 F 2d 228 and U.S.C. 1746 that the foregoing is true and factually correct to the best of my knowledge and belief as a Notary is not readily available. Note: I was assisted by a prisoner legal advocate on this motion.

Dated this 8th day of February, 2018.



Mr. Michael J. Van Caster

CERTIFICATION OF LENGTH AND FONT

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b) and (c) for a brief produced using the following font: Monospace Font:

The length of this brief is 15 pages.

Dated this 8th day of February, 2018.



Mr. Michael J. Van Caster

Pro-Se Defendant

Certification of Mailing

I certify that this brief or appendix was deposited into the Unit (6) Housing Unit mail box on for delivery to the Clerk of the Wisconsin Court of Appeals by first class mail, or other class of mail that is at least as expeditious, on this _____ day of February, 2018. I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

Dated this 21ST day of February, 2018.



Mr. Michael J. Van Caster

Pro-Se Defendant