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STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

CLERK OF CIRCUIT COURT
OUTAGAMIE COUNTY FILED
AUG 15 2023
AT O'CLOCK

STATE OF WISCONSIN,
Plaintiff,
v.
Kenneth A. Hudson,
Defendant.

Case No. 2000CF403

POST-CONVICTION MOTION

PLEASE TAKE NOTICE that the Defendant, Kenneth A. Hudson, ("Hudson"), pro se, respectfully moves this Court for relief pursuant to Wis. Stat. $974.06 for relief as follows: Dismissal of all charges based on prosecutorial misconduct, Outrageous Governmental Conduct, subornation of perjury, knowingly using and encouraging perjured and false evidence, tampering with evidence, suppressing and destroying highly exculpatory evidence that shows the Defendant's innocence, and Ineffective Assistance of both Trial and Post-conviction counsel. In the alternative, the Defendant asks this Court to issue Orders for the State to comply with all previous discovery requests and that the Court order a new trial. Hudson asks that this Court grant a new trial in the interests of justice pursuant to Wis. Stat. $805.15 or its inherent authority because the real controversy was not fully tried and any other relief this Court deems appropriate in the Interest of Justice.
As grounds for granting said motion, Hudson submits the following:

PROCEDURAL HISTORY

On June 27, 2000, Hudson was charged with 1 count of first-degree intentional homicide, 1 count of attempted first degree intentional homicide, and 1 count of first-degree reckless endangerment. On July 28, 2000, after a preliminary hearing, Hudson was charged by an Information with the 3 charges listed in the complaint, as well as a fourth charge of attempted kidnapping. From March 5 to March 9, 2001, a jury trial was conducted on these charges and Hudson was convicted on all counts. For the first 3 days of trial, Hudson, over his objection, represented himself after the Court determined that he had waived or forfeited his right to counsel by operation of law. For the last 2 days of trial, Hudson, again over his objection, was represented by the attorney who had been appointed as standby counsel during the first 3 days of trial, an attorney who had previously been discharged by Hudson and permitted to withdraw. The State was represented by District Attorney Vince Biskupic ("Biskupic") and Assistant District Attorney Carrie Schneider("Schneider").

On April 3, 2001, Hudson was sentenced to a term of life imprisonment without possibility of release to extended supervision on count 1, first degree intentional homicide; to 30 years consecutive on count 2, attempted kidnapping; to 60 years consecutive on count 3, attempted first degree intentional homicide; and to 10 years consecutive on count 4, first degree reckless

endangerment in Outagamie County Circuit Court, Case No. 00-CF-403, Judge Harold V. Froehlich, Presiding.

Hudson was initially represented in postconviction proceedings and on appeal by retained counsel, attorney Jonathan C. Smith. Smith filed a post-conviction motion on October 31, 2001, raising 8 issues, 5 of which related to Hudson's self-representation at trial. (R.100-01). Judge Froehlich heard and denied the motion on January 14, 2002. (R.112). Smith appealed to the Court of Appeals.

On July 10, 2002, the Court of Appeals permitted Hudson to discharge attorney Smith from his representations (based upon his assertions that Smith had provided ineffective assistance in the Circuit Court) and allowed Hudson time to seek State Public Defender (SPD) appointment of new counsel. On August 7, 2002, the SPD appointed attorney David D. Cook to represent Hudson.

On October 8, 2002, attorney Cook moved the Court of Appeals to remand the case back to the Circuit Court so that he could file a Wis. Stat. $974.07 motion for DNA testing, and a supplemental post-conviction motion "to present new issues and to develop a factual record on the issues previously raised by attorney Smith because Smith had failed to call any witnesses or to present any evidence at the postconviction hearing to adequately develop the record with regard to any of the issues raised."

On November 12, 2002, the Court of Appeals, "noting the need to avoid a piecemeal appeal," dismissed the pending appeal and remanded the case to the Circuit Court to allow attorney Cook to file a $974.07 motion for DNA testing and a supplemental post-conviction motion within 20 days of a decision on the DNA motion.

On remand, attorney Cook filed motions for DNA testing. (R.154;156;158; 161). Judge Froehlich heard and denied the motions. (R.159;163). Cook then appealed to the Court of Appeals. On August 5, 2003, Cook timely filed Hudson's supplemental post-conviction motion. This motion was stayed pending resolution of the DNA appeal. On April 27, 2004, the Court of Appeals granted Hudson relief, in part, and remanded the case to the Circuit Court so that the State could make evidence available to Hudson for independent DNA testing.

Following remand of the DNA appeal, attorney Cook fi l e d motions for "discovery, inspection and defense scientific examination and testing." (R. 181;186-87;190;199). Judge Froehlich conducted hearings on these motions. (R.245- 248b). (Attorney Cook demanded disclosure of numerous items of evidence which the State had intentionally suppressed from Hudson and his attorneys prior to trial, that supported Hudson's defense that the police had planted the knife in his truck and testified falsely at his trial.) On September 1, 2005, attorney Cook filed the DNA testing results with the Circuit Court. (R.190a). Judge Froehlich then granted Cook's request for an evidentiary hearing on Hudson's (pending 8/5/03 supplemental post-conviction motion) for January 19, 2006. Cook advised the Court that he would also be filing an "additional supplemental postconviction motion within 20 days of the hearing (raising new issues based on

the postconviction discovery provided by the State and the highly exculpatory DNA testing results)." (R.264: 9/1/05, hearing Tr.).

On October 5, 2005, (prior to the postconviction hearing), Judge Froehlich allowed attorney Cook to withdraw from the case (before he fi l e d Hudson's additional supplemental post-conviction motion) because he was closing his law practice. On November 8, 2005, the SPD appointed attorney Chris A. Gramstrup to represent Hudson. On June 27, 2006 , Froehlich heard and denied Hudson ' s petition for new trial on the only issue (shock belt) that was presented by Gramstrup. (R.231). Gramstrup appealed to the Court of Appeals.

On June 27, 2007, the Court of Appeals granted Hudson's motion for the appointment of new counsel and motion to remand the case back to the Circuit Court for supplemental postconviction proceedings, "because attorney Gramstrup had been grossly ineffective." The SPD then appointed attorney James Rebholz to represent Hudson.

On October 16, 2007, the Court of Appeals dismissed the pending appeal and remanded the case back to the Circuit Court, "ordering the Circuit Court to allow Rebholz to resolve all pending discovery requests, to file additional discovery requests, to test and inspect trace evidence, and to file a Comprehensive post-conviction motion under $809.30, to present claims that were previously submitted but inadequately developed, claims that were previously submitted but not litigated since the Court's (11/12/02 remand), and any new claims." (See R.275: Exhibit A, Court of Appeals 10/16/07, Order).

On remand, attorney Rebholz filed supplemental demands and motions for "discovery, inspection and testing." (R.253;259;263;276;282). Judge Froehlich conducted hearings on these motions. (R.301-07).

On January 30, 2009, attorney Rebholz filed Hudson's Comprehensive motion for post-conviction relief raising over 48 issues for new trial. (R.260). The State responded. (R.265;273). On September 25, 2009, Judge Froehlich granted Hudson a hearing on only "3 of the claims raised by Rebholz" (claims I, III-B and III-P) and denied a hearing and relief on all other claims, "ruling that they were based on conclusory allegations and not supported by the record." (R.281).

On October 26-27, 2009, Judge Froehlich conducted hearings on claims I, III-B and III-P. (R.309-10). After additional briefing, (R.291), Froehlich issued a decision on December 30, 2009, denying Hudson's petition for new trial on these 3 claims. (R.294). Attorney Rebholz appealed to the Court of Appeals.

On August 2, 2011, the Court of Appeals affirmed Hudson's convictions and the Circuit Court's denial of his postconviction claims in an unpublished decision. On August 30, 2009, Rebholz filed a Petition for Review in the Wisconsin Supreme Court. The Petition for Review was denied on October 24, 2011.

In January 2013, Hudson filed a pro se Wis. Stat. $974.06 motion for postconviction relief. On March 20, 2013, this Judge Gill entered an order for the SPD office to appoint Hudson counsel to

represent Hudson in his 974.06 proceedings "due to the nature of the issues and the belief that counsel may assist in further developing arguments." The SPD refused to appoint Hudson counsel "arguing that this Court didn't have the authority to order the SPD to appoint counsel. After a hearing held in April 2013, Judge Gill rescinded his 3/20/13, order and required Hudson to proceed pro se. Hudson then filed Amended $974.06 motions. The State responded. While Hudson was waiting for the Court to decide on his 974.06 motions, Hudson was able to obtain the money from his family to retain private counsel and requested this Court to stay the proceedings so that he could retain counsel to represent him. The Court granted the request.

Hudson ultimately retained attorney Steven Miller to represent Hudson. On December 2, 2015, Miller filed a motion for forensic testing with this Court. The Court granted his motion. Miller further advised the Court that "he was withdrawing Hudson's pro se 974.06 motions and that he would be filing his own Amended 974.06 motion" after receiving the forensic testing results.

On January 31, 2018, attorney Miller filed Hudson's Wis. Stat. $974.06 motion for post-conviction relief, arguing that Hudson's post-conviction counsel attorney "James Rebholz" was ineffective for (a) failing to properly argue harmless error as it related to Hudson's Miranda related claims, (b) for failing to raise Government misconduct under Nape v. Illinois, that the State knowingly used false testimony by numerous police officers to obtain Hudson's convictions, (c) that Hudson was denied his right to trial counsel, and (d) that Rebholz was ineffective for failing to seek the forensic testing which Miller sought, etc.

Upon reviewing the 974.06 motion filed by Miller, Hudson advised Miller that he had made "numerous errors' throughout the motion, including falsely accusing the State of suppressing evidence "despite the fact that the record clearly shows the evidence was turned over", and falsely accusing several police officers of committing perjury at trial, Etc." and that he insisted that Miller make the corrections to the motion, Etc. However, Miller refused to make the corrections to the motion.

Hudson then sent this Court a letter on February 8, 2018, advising the Court of all the error's Miller made in his motion and requested the Court to order Miller to withdraw the motion and to make the proper corrections to it and then "refile it with the Court." In response, Miller filed a "Motion to Withdraw" as Hudson's counsel based upon several reasons, however, Miller "didn't deny Hudson's assertions that he had made the numerous errors in his motion." The State filed a motion with this Court on February 16, 2018, asking the Court to grant Miller's motion to withdraw and to order that there are no pending motions. This Court then granted Miller ' s motion to withdraw the same day, without providing Hudson with an opportunity to respond to it. Hudson then filed a "Motion to Reinstate" Miller as his counsel and a reply to the State's 2/16/18 motion. This Court then conducted a status hearing on April 12, 2018, and denied Hudson's motion to reinstate Miller as his counsel and further ordered that Miller's "974.06 motion is withdrawn from the record and that there are no pending motions before the Court." Hudson filed a 974.06 pro se motion.

On June 18, 2018, Judge Gill permitted Hudson to file one last Wis. Stats. 974.06 Motion raising all issues for relief. Attorney Sterns started representing Hudson on June 19, 2018.Hudson asked

for more discovery regarding negatives and dispatch logs. Eventually Judge Gill ordered that photos of the negatives must be given to Hudson.

Judge Gill was elected to the District III Court of Appeals and was sworn in as an Appellate Judge on August 1, 2021. The Honorable Yadira J. Rein was appointed on June 25, 2021, to succeed Judge Gill for Branch IV in Outagamie County. On August 27, 2021, Judge Rein ruled on a motion for withdrawal of counsel on the Defendant's case. On October 21, 202, an Application for Specific Judicial Assignment was filed. The application states that the Judge assigned to the case is Judge Gregory Gill. The basis for the request was that Judge Gill was recently elected to the Court of Appeals. Judge James Morrison assigned the matter to himself. Judge Morrison reversed Judge Gill's order regarding the negatives as "malarkey." Attorney Stern withdrew from the case. On August 3, 2022, the Court ordered the sheriff's department tp bring printed pictures of the 5 negatives to the Defendant. The sheriff's department provided photos on regular paper instead of photo paper. Sometime after a demand for photos made by the Defendant, Judge Morrison had an exparte meeting with the Sheriff's Officer and viewed the negatives and/or photos that were being requested. This was done in the Court's chambers and was not recorded by any means.

On October 20, 2022, Attorney Balskus filed a notice of retainer. A motion to return the case back to Judge Rein, along with a motion for the Court to recuse itself was denied. Attorney Balskus was removed by the Court on February 24, 2023. Hudson now appears pro se filing this 974.06 motion.

1. Requirements for Wis. Stat. 974.06 Motion.

In order to adequately raise a claim for relief under Wis. Stat. $974.06, a defendant must do 3 things: First, he must show that he is "in custody under sentence of a Court" pursuant to Wis. Stat. $974.06(1). Second, if he has previously filed a direct appeal or a Wis. Stat. $974.06 motion, he must show a "sufficient reason" for not making the claim earlier. State v. Escalona-Naranjo, 185 Wis. 2d 169, 173, 517 N.W. 2d 157 (1994); State v. Lo., 2003 WI 107, 264 Wis. 2d 1, 944, 665 N.W. 2d 756. Third, the defendant must allege "sufficient material facts--e.g., who, what, where, when, why and how--that, if true, would entitle [the defendant] to the relief he seeks." State v. Romero-Georgana, 2014 WI 83, 9130, 37, 360 Wis. 2d 522, 530, 849 N.W. 2d 668, 672.

2. Wis. Stat. §974.06 "in custody" requirement.

The defendant (Hudson) is currently serving a life sentence without the possibility of parole and is therefore "in custody under sentence of a Court' pursuant to Wis. Stat. $974.06(1).

3. Escalona-Naranio "sufficient reason".

Issues previously adjudicated, waived, or not raised in a prior post- conviction motion are barred in a $974.06 motion unless there is "sufficient reason" for failing to raise or adequately raise them previously. State v. Escalona-Naranjo at 181-82. Whether a Wis. Stat. $974.06 motion alleges a sufficient reason for failing to raise or adequately raise them earlier is a question of law.

Romero-Georgana, at P.30 . Ineffective assistance of post- conviction counsel may constitute "sufficient reason" under Escalona-Naranjo. See State ex. rel Rothering v. McCaughtry, 205 Wis. 2d 675 (1996) (If the defendant alleges that he did not raise or that an issue was not adequately raised because of ineffective post-conviction counsel, "[t]he trial court can perform the necessary factfinding function and directly rule on the sufficiency of the reason."). Id. In other words, "sufficient reason" exists under Escalona-Naranio to the extent Defendant's ineffective assistance of postconviction counsel claims have merit. Romero-Georgana, at 136.

Here, Hudson's Wis. Stat. $974.06 motion is based entirely on claims of ineffective assistance of postconviction counsel, "with the exception of several claims, including that several Officers knowingly testified falsely at Hudson's trial, (b) Brady violation based upon the State's failure to disclose the evidence which proves that Officers testified falsely at trial, (c) an intentional destruction of evidence claim, as will be fully detailed below and that post-conviction counsel failing to raise a Nape v. Illinois claim which would be an easier standard for Hudson to meet. Hudson does not need to show sufficient reason as to why these 4 claims were not raised previously, because they all stem from the State's Brady violation, as will be shown below.

Hudson is not barred from filing this current Wis. Stat. 974.06 motion, because Hudson "has not had a 974.06 motion decided on the merits" and because his previous pro se 974.06 motions were withdrawn by attorney Miller, and this Court withdrew Miller's 974.06 motion after the Court allowed him to withdraw. Therefore, Hudson has the right to file the instant 974.06 motion and raise the issues contained therein.

In State v. Star, 2011 WI App 58, 332 Wis. 2d 804, 798 N.W. 2d 319, Star filed a pro se 974.06 motion in the trial Court raising several issues. The trial Court appointed an attorney (at County expense) to represent Star in his 974.06 proceedings. Counsel then filed his own 974.06 motion, and the Court granted a Machner hearing. On the morning of the Machner hearing, Star explained to the Court that he wanted to raise several issues that his attorney had not raised. The Circuit Court explained to Star that "he had a right to proceed with counsel's assistance, in which case Star would have to let counsel decide what issues to raise," or "he had a right to proceed without counsel's assistance and raise whatever issues he would like to raise." After a lengthy discussion, "Star decided to proceed with counsel's assistance." On appeal, Star argued to the Court of Appeals that the Circuit Court had erred in not allowing him to raise the several issues that his counsel had not raised, however, the Court of Appeals rejected this argument stating that the Circuit Court "had advised Star that he had the right to proceed without counsel and to raise whatever issues that he would like to raise, however, that Star choose to proceed with counsel." (See Appendix: 1, page 2 of Court of Appeals decision in Star's case).

In Hudson's case, Hudson repeatedly asked this Court "if he had the right to refile his 974.06 motion pro se and raise the issues he wanted to raise including "issues that his attorney (Miller) had failed to raise in his 974.06 motion, and to correct and raise the issues that Miller did raise in the motion he filed," however, this Court refused to tell Hudson if he had the right to refile his 974.06 motion and raise the issues he wanted to raise, because the Court allowed Miller to withdraw as his counsel (over Hudson's objection) and ordered that Miller's 974.06 motion is withdrawn from the record, as well as Hudson's previous pro se 974.06 motions he filed in

2013, this Court refused to tell Hudson if he had the right to refile his 974.06 motion, because (Judge Gill) is not his counsel and couldn't advise him of that. However, the trial Court Judge (Daniel L. Konkol) in Star's case, "told Star that he had the right to proceed without counsel and raise whatever issues he would like to raise."
Hudson submits to this Court that he has the right to file the instant 974.06 motion pro se and is not barred from filing it under Escalona-Naranjo, because (1) this Court allowed his counsel to withdraw from the case and required Hudson to proceed pro se, (b) this Court further ordered that Millers 974.06 motion is withdrawn from the record, "because Hudson was dissatisfied with it, because Miller failed to raise issues Hudson wanted raised and because Miller allegedly made numerous errors in the motion," and (c) Hudson has never had a "974.06 motion decided on the merits."

4. Allegation of sufficient material facts that would entitle defendant to relief.

When the relief sought is a new trial based upon the alleged ineffective assistance of postconviction counsel, the defendant must show with some particularity how he intends to prove that postconviction counsel's performance was objectively deficient and how that performance resulted in prejudice to the defense. State v. Balliette, 2011 WI 79, 140, 36 Wis. 2d 358, 805 N.W. 2d 34. A defendant must allege "sufficient material facts--e.g., Who, what, where, when, why, and how--that, if true, would entitle [the defendant] to the relief he seeks." Romero-Georgana, 2014 WI 83 at 1130, 37. If he does so, a hearing is required. Id. Whether a $974.06 motion alleges sufficient facts to require a hearing is a question of law. Id., at 130. If the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing. Id.

STANDARD FOR INEFFECTIVE ASSISTANCE OF COUNSEL

A defendant is entitled to effective assistance of counsel at trial, in postconviction proceedings, and on direct appeal. State v. Evans, 2004 WI 84, 130, 273 Wis. 2d 192, 682 N.W.2d 784; State v. Peterson, 2008 WI App 140, 111, 314 Wis. 2d 192, 757 N.W.2d 834. In order to establish a claim for ineffective assistance of counsel, the defendant must show: (1) that counsel's performance was deficient, and (2) counsel's deficiency prejudiced the defendant. State v. Starks, 2013 WI 69, 954-55, 349 Wis. 2d 274, 833 N.W.2d 146. Deficient performance depends on whether the attorney's performance was reasonably effective considering all the circumstances. Stark, at 54-55. The "reasonableness of counsel's conduct must be evaluated "on the facts of the particular case, viewed as of the time of counsel's conduct." (cites omitted) Id. The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. Prejudice occurs when there is a "reasonable probability" that but for the error, the outcome would have been different. A "reasonable probability" means "a probability sufficient to undermine confidence in the outcome," i.e., there is a "substantial, not just conceivable, likelihood of a different result.'" (citations omitted). Stark, at 955.

CLAIMS FOR POST CONVICTION RELIEF

A. ATTORNEY REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE NAPUE V. ILLINOIS CLAIM THAT KPD OFFICER, JOHN MANION LIED AT TRIAL AND THAT THE STATE KNOWINGLY AND INTENTIONALLY PRESENTED THE FALSE TESTIMONY AND FAILED TO CORRECT THE FALSE TESTIMONY AND VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5th &14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

Under Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173 (1959), when a prosecutor uses false testimony in a criminal case, including testimony affecting only the credibility of a witness and which does not directly touch on the innocence or guilt of a defendant, it violates the 5th Amendment Due Process Clause of the Fourteenth Amendment of the United States Constitution. This is a much easier standard to reach as compared to a Brady claim which may be subject to a harmless error analysis. Attorney Rebholz was ineffective for failing to make this argument. See Bowers v. State, 55 Wis 2nd 155, 197 N.W.2nd 769(1972) Postconviction counsel failed to competently argue prejudice/harmless error as it pertains to the Defendant's Miranda related claims. Second, postconviction counsel failed to raise or competently argue claims based on Napue v. Illinois.

The Miranda related claims center on the hospital tape. The hospital tape would have proved Hudson unequivocally invoked his right to counsel while in custody and prior to giving his "stationhouse confession." As the court of appeals acknowledged in its 2011 decision:! "[o]ver five years after Hudson's trial, upon our order, the State provided a transcript of the "audiotape' recording Hudson's first custodial interview at St. Elizabeth's Hospital. Despite the State having asserted throughout the case that 'Hudson's alleged request for counsel was ambiguous', the transcript revealed "Hudson unequivocally invoked his right to counsel at the hospital." (COA, at P34). His remedy, as the court of appeals acknowledged, would have been suppression of his stationhouse "confession." (COA, P35). Nonetheless, both the circuit court and the court of appeals found that even if the "confession" should have been suppressed, the error was harmless (or not prejudicial) given the "overwhelming" evidence against him. Id.

Postconviction counsel addressed the withheld hospital tape with both Brady and ineffective assistance of trial counsel claims. He alleged the State violated Brady for failing to disclose the hospital tape (as well as repeatedly asserting to the circuit court and defense counsel that Hudson had not invoked his right to counsel). Alternatively, trial counsel was ineffective for failing to obtain it. Brady violations required the State to prove harmless error. Ineffective assistance of trial counsel required postconviction counsel to prove prejudice. For the sake of clarity, Hudson will refer to both as "harmless error." Hudson will use the word "prejudice" primarily to mean the prejudice he must prove in this ineffective assistance of postconviction counsel claim. In other words, to prove a claim of ineffective assistance of postconviction counsel, Hudson must show he was prejudiced by his postconviction counsel's failure to make a competent prejudice or harmless error argument in the prior proceedings.

Postconviction counsel's harmless error argument was deficient for three reasons: First, he failed to address how the unsuppressed confession impacted the verdict, considering the State's non-confession evidence. Second, he failed to show how the unsuppressed confession caused Hudson to change his trial strategy to his detriment. Third, he failed to address the proper legal standards for harmless error. Had a harmless error argument been properly made, there's a reasonable probability the outcome would have been different. In other words, confidence in the postconviction court's (or the court of appeals) finding of harmless error would have been undermined.

Postconviction counsel was also ineffective because he failed to specifically raise and argue claims under Napue v. Illinois, 360 U.S. 264, 269 (1959). A defendant's due process rights are violated when the State uses evidence at trial that it "knew or should have known" was false, or failed to correct evidence it knew was false. Multiple State witnesses demonstrably perjured themselves at trial, including John Manion; Kevin Shepardson; Mary Schulke; Randy Reistock, and Robert Patschke. They testified falsely concerning Hudson's invocation of counsel; whether Patschke knew the victim had been stabbed before he found the knife; whether the dispatch tape was accurate (when it did not contain exculpatory radio broadcasts); whether certain officers were at the scene of the arrest and found the knife in Hudson's truck; and whether the "confession" tape had "self-erased." Also, the prosecutor, Vince Biskupic, repeatedly misrepresented to the court and defense counsel that Hudson had not invoked his right to counsel. Napue claims are subject to a "strict materiality" harmless error standard. United States v. Agurs, 427 U.S. 97, 104 (1976).

On Page 16 of Manion's and Shepardson's report they state that at approximately 11:00pm Manion and Shepardson read Hudson his “Miranda Warnings” and the asked Hudson if he understood his rights and Hudson said yes. They then state at 11:08 PM, Officer Donald Krueger did read Hudson the "Informing the Accused Form" in pursuit of an OWI offense and that Hudson refused at this time to give a sample of his blood. They then state at this point Hudson said: “Don’t I have a right to talk to an attorney, what's going on here?” Officer Krueger then told Hudson, “Not at this time and the procedure then continues.” (See enclosed page 16 Manion's and Shepardson's report, Exhibit 1).

Attorney James Rebholz argued that Manion and Shepardson falsified their report by claiming that Hudson said, "Don't I have a right to talk to an atty., what's going on here?", arguing that Hudson never said that, that the hospital tapes show Hudson said, " I want to talk to an attorney." (See Rebholz 1-30-09 PCM, Exhibit 2)

However, see attached transcript of the hospital tapes, (Exhibit 3.) On page 11-12, Officer Manion reads Hudson his "Miranda Rights." Then on page 15-16, Officer Krueger tells Hudson is going to read him the "Informing the Accused Form” and starts to read it the form to Hudson. Hudson states, “I want to talk to a lawyer!!” Then on page 19, Hudson states: "Do I have a right to an attorney!" Then on page 20-21, Hudson states: (1) "Don't--what's going on? Don't I have a right to talk to an attorney? What's going on here." Officer Krueger then states: "Not at this point here, okay. We're going to have to draw some blood. Hudson then states:" I don't have a right at this time--what's going on"?

Manion and Shepardson intentionally and deliberately suppressed Hudson's request for counsel. " I want to talk to a lawyer" from their report to cover up their intentionally "Miranda Violation" by taking Hudson to the Kaukauna Police Department (KPD) to interrogate Hudson after Hudson had invoked my right to counsel while at the hospital!!

Atty. Rebholz was clearly ineffective for failing to raise the Napue v. Illinois claim that Manion and Shepardson intentionally and deliberately suppressed Hudson's highly unequivical request for an attorney. "I want to talk to an attorney.", from their report shows this. This shows a conspiracy between Manion and Shepardson to intentionally suppress Hudson's request for an attorney while at the hospital to coverup their intentional "Miranda Violation' by taking Hudson to the KPD to interrogate Hudson after Hudson had invoked his right to counsel at the hospital!!

This Napue v. Illinois claim would have also had a serious impact on the Brady Claim that Manion and Shepardson intentionally and deliberately suppressed State Crime Lab DNA expert, John Ertl's 2nd report dated August 22, 2000, showing that Carnot had the victim's blood on his body!! If Rebholz would have raised this Napue v. Illinois -violation, it would have also shown a conspiracy and would have supported Hudson's other claims that Manion intentionally perjured himself at Hudson's trial by testifying that the audio-video tape of my alleged confession had erased itself!!

If the Court of Appeals and the trial court would have heard this evidence, the Courts would not have concluded and determined that it was harmless error that Hudson's alleged confession was erroneously admitted into evidence!! And, that Hudson's "conspiracy theory was far-fetched" that Hudson was framed by the police!!

Rebholz failing to raise this issue and failing to make an improper argument in his 1-30-09 PCM by claiming that Manion and Shepardson falsified their report by claiming Hudson said, "Don't I have a right to talk to an attorney, what's going on here," because Hudson actually did state that, but after Hudson had said: "I want to talk to an attorney!!"

The prosecution knew that Hudson asked for an attorney at the hospital. The State failed to turn over the tape until years after the trial. Biskupic told the Court that any claim for counsel was ambiguous (See Prosecutorial misconduct section) He lied to the Court which the Appellate Court acknowledged but held that it was harmless error under Brady. That is one reason why there must be an evidentiary hearing for Biskupic to testify why he allowed the Officers to lie in Court and why he did not inform the Court of the false testimony.

The U.S. Supreme Court has recognized that inculpatory statements are uniquely harmful: a "confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him." (Emphasis added) Arizona v. Fulminante, 499 U.S. 279, 296 (1991) (White, J., opinion of the Court). "Apart, perhaps, from a videotape of the crime, one would have difficulty finding evidence more damaging to a criminal defendant's plea of innocence.") (emphasis added). Id., at 313 (Kennedy, J., concurring).

The detrimental impact of an unsuppressed confession goes beyond the effect it may have on the verdict, moreover. A defendant may also be prejudiced because of how the unsuppressed confession affected his trial strategy:

Admission of a full confession immensely complicates the defendant's trial strategy; it puts pressure on him to give up the right to remain silent, it can foreclose alternative theories of the defense (such as an alibi) that are inconsistent with the confession. A wrongfully admitted confession also forces defendants to devote valuable trial resources neutralizing the confession or explaining it to the jury, resources that could otherwise be used to create a reasonable doubt as to some other aspect of the prosecution's case. The devastating effect of a full confession on the defendant's case is not a matter of speculation - it is hard fact documented in many judicial opinions and discussed widely in law review articles. (Emphasis added) Rice v. Wood, 7 F.3d 1138, 1142 (9th Cir. 1996). Based on the fruit of the poisonous tree doctrine, testimony induced by an unsuppressed confession cannot be used to support a conviction on harmless error review. Harrison v. United States, 392 U.S. 219, 222 (1968); Lujan v. Garcia, 734 F.3d 917, 930 (9th Cir. 2013). See also United States .v Pelullo, 173 F.3d 131 (3rd Cir. 1999) (applying the Harrison analysis with regard to Brady evidence); United States v. Duchi, 944 F.2d 391 (8th Cir. 1991) (applying the Harrison analysis with regard to an inappropriately seized evidence).

Postconviction counsel's harmless error argument was deficient for three reasons. First, he failed to address how the unsuppressed confession impacted the verdict, considering the evidence as a whole. Had postconviction counsel addressed the State's case at a substantive factual level, he would have been able to show the State's non-confession evidence was far from overwhelming and that the unsuppressed confession had a clear and prejudicial impact on the verdict. Second, he failed to show how the unsuppressed confession caused Hudson to change his trial strategy to his detriment. Had he addressed how the unsuppressed confession detrimentally affected Hudson's trial strategy, he would have shown structural prejudice, including a denial of Hudson's Sixth Amendment right to counsel. Third, he failed to address the proper legal standards for harmless error.

Proving harmless error in a postconviction context requires counsel to weigh the effect of the "confession" evidence relative to the State's non- confession evidence. See e.g. Jensen v. Clements, 800 F.3d 892, 904 (7th Cir. 2015).4 Not all confessions are alike, and the extent to which independent evidence is cumulative to the "confession" will differ from case to case. In making the argument postconviction counsel should have made, Hudson relies on all the evidence currently available. This includes evidence available to trial counsel, evidence developed post-trial, and evidence developed post-appeal. In other words, all the evidence that either was or should have been available to trial counsel and should have been put before the jury. Much of this evidence is directly related to the myriad of ineffective trial counsel and Brady claims Hudson made in his postconviction motion as well as evidence developed post-appeal. In showing the utility of this evidence in rebutting harmless error, Hudson is simultaneously showing how this evidence would have made a difference at trial. In other words, whatever error (Brady violation or ineffective assistance of counsel) caused the unavailability of this evidence at trial in the first place was not harmless. Thus, implicit in Hudson's claim that postconviction counsel was deficient for failing to adequately address harmless error in the context of his

Miranda claims, he is also claiming postconviction counsel failed to address harmless error for the rest of his claims.

Once the blood samples from Hudson's person were obtained at St. Elizabeth's Hospital, he was taken directly to the KDP station. (140:95). According to the testimony of Assistant Chief of Police John Manion, the interview began with a lengthy discussion of Hudson's activities and whereabouts that weekend. (140:95-107; 155). The police relied on this to establish motive and opportunity. The interview then turned to what happened on Plank Road. (140:107). At this point Manion claims Hudson admitted he stopped to ask the victim for directions and somehow got into an argument with her and said, "I think I stabbed - " (140:109). After continued questioning, he admitted he "pushed the girl into the passenger side of the truck, forcing her in." She "fought with me like my mother did." (140:110, 122). When asked if he stabbed her while she was in the truck, he answered: "I believe so," but "didn't remember" how many times he stabbed her. (140:110-111). She then got out of the truck and Hudson left.(140:112). Hudson "admitted" he bought the knife that day. (140:111, 163; 141:48). The police also pieced together Hudson encounter with Carnot, and his trip from the scene to his place of his arrest. (140:112). Manion also observed for the jury's benefit that Hudson had "blood all over" his hands and arm. (140:115)

Manion's "confession" testimony was repeated nearly verbatim by Lt. Kevin Shepardson, who was also present in the interview room. (140:153- 169) Shepardson also testified Hudson admitted "he stabbed the girl." (140:164) Hudson had approached her in his truck, started "arguing" with her, then got out and forced her into the truck from the passenger side. (140:166). When asked if her stabbed her while she was in the truck, Hudson answered: "I think so." (140:166). When asked how many times he stabbed her, he answered he couldn't remember. (140:166). She then got out of the truck and Hudson left, as some guy had come at him. That was when he swerved his vehicle, blowing a tire. (140:167)

The State made lengthy reference to Hudson's "confession" in it's opening statement (136:188-193), including the fact that Hudson "admitted" forcing the victim into his truck and stabbing the victim at least twice. (136:188-193; 191). In its closing argument, the prosecutor cited Hudson's "admissions" at least 8 times, including both closing statement and rebuttal. (141:108, 109, 115, 116, 117, 137, 153). The State also made specific reference to Hudson's "statements" in support of its argument against his motion to dismiss at the close of the State's case, especially on the homicide and kidnapping charges. (141:7, 8).

In his motion and brief to the circuit court, postconviction counsel's prejudice argument was conclusory and undeveloped. His prejudice argument concerning trial counsel's failure to obtain the hospital tape was as follows:

The refusal by Carns to demand, discover, and obtain the hospital tapes from the State prejudiced Hudson because (1) the tapes existed and were in the State's possession prior to and during trial; (2) the tapes were exculpatory for pretrial suppression and trial cross-examination purposes; (3) and Carn's failure to obtain the tapes caused Hudson to terminate Carn's representation and effectively represent Hudson. (260:51). His prejudice argument concerning trial counsel's failure to seek suppression was:

This deficient performance prejudiced Hudson because (1) Hudson invoked his right to an attorney after being informed of his Miranda rights, both at St. Elizabeth's Hospital and at the KDP station house; (2) the court's holding. Third, the decision illustrates by omission the failure to apply the proper legal standards postconviction counsel should have advocated, including the proper harmless error tests.

This "overwhelming" evidence of Hudson's guilt observed by the court of appeals included:

1)Hudson's "high-speed flight from the scene in his damaged truck--after abandoning his boat on the roadside." (COA P.41);

2) Hudson's "unchallenged, unprompted statements in the back of the squad car and the jail." (COA P.41);

3) Hudson's "failure to offer the jury a full innocent explanation for his actions....." (COA ,P. 41).

4) The blood visible on Hudson's arms, chest, stomach, legs, and feet. (COA, P.19);

5) The window crank, trim and lens from truck found at the scene (COA, P. 11).

6) The victim's blood found on "the passenger side seatbelt of Hudson's truck, the exterior passenger door, the interior driver door, the truck cap, the knife in the truck, and on swabs of Hudson's right hand" as well as her "thumb print was on the interior passenger door of the truck." (COA P.14).

In contrast, "no reasonable person would have accepted Hudson's conspiracy defense. » (COA, P.39). Hudson's "pro se defense at trial was that police had framed him for the homicide. Hudson, who acknowledged seven prior convictions, asserted that an officer poured blood on him in the squad car, that he was turning his truck around at the quarry, that he did not force Van Dyn Hoven into his truck or stab her, that he did not try to run down Carnot, and that he did not recall the highspeed chase." (COA P.15). Hudson's conspiracy defense was untenable, "particularly in light of Hudson's high-speed flight from the scene and police, his unprompted incriminating statements, and eyewitness testimony." (COAP. 39). "Indeed, Hudson's frame-up theory premised on a conspiracy between numerous law enforcement officers from multiple agencies -was so preposterous that his claim that Carns [trial counsel] pursued an unreasonable strategy would be stronger if Carns had instead relied solely on the conspiracy defense." (COA, P. 43).

The court of appeals also noted throughout its decision, however, that Hudson's harmless error related arguments were "insufficiently developed "or non-existent:

"Hudson does not appear to argue that his spontaneous statements made in the back of the squad car or in the jail would have been inadmissible. (COA, P.35).

Hudson's knife tampering argument "is conclusory, meritless, and insufficiently developed."

(COA, P. 37).

"Hudson's remaining evidence suppression and tampering arguments are not sufficiently developed to merit review, see id., and/or are subject to harmless error, or do not merit individual attention." (COA, P. 39).

"The incriminating evidence was overwhelming, such that exclusion of Hudson's confession would have had no practical effect on the outcome of trial. Moreover, Hudson's argument is insufficiently developed." (COA, P.42).

Regarding the subsequent statement in the squad car, the State argues the statement was sufficiently attenuated from any illegality. Hudson concedes this argument by failing to present a countervailing attenuation analysis in his reply brief. Neither Hudson nor the State addresses the admissibility of Hudson's statement to the jailer that the blood on his feet was 'from her.' We therefore presume it was admissible. (COA, P52) (emphasis added).

A competent evidentiary argument would have shown the State's evidence was much weaker than it appeared, and therefore, Hudson's "confession" was not harmless: 1) most of the evidence the court of appeals relied on proves undisputed facts that do not directly implicate Hudson as the perpetrator; 2) the most inculpatory evidence-the bloody knife and the blood on Hudson's person--are surrounded by suspicious circumstances and state misconduct more than sufficient to create doubt as to authenticity; and, 3) the unrecorded, unwritten, and denied inculpatory statements Hudson allegedly made to John Manion were only as good as Manion's credibility, which was severely undermined by his perjury at trial.

B. ATTORNEY REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE "BRADY -CLAIM" THAT KPD OFFICER'S, JOHN MANION AND KEVIN SHEPARDSON, KNOWINGLY LIED, AND DELIBERATELY SUPPRESSED HUDSONS' HIGHLY EXCULPATORY REQUEST FOR AN ATTORNEY WHILE AT THE HOSPITAL FROM THEIR POLICE REPORT RESULTING IN HUDSON'S DUE PROCESS RIGHTS UNDER THE 5th & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION BEING VIOLATED

In State v. Wayerski, 2019 WI 11, 385 Wis. 2nd 344 (Wis. S. Ct. 2019) the Wisconsin Supreme Court modified the "Brady Claim" standard. At Par. 35, the Court noted, "A Brady violation has three components: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the evidence must be material." Later the Court indicated that "We renounce and reject judicially created limitations on the second Brady component that find evidence is suppressed only where: (1) the evidence was in the State's "exclusive possession and control"; (2) trial counsel could not have obtained the evidence through the exercise of "reasonable diligence"; or (3) it was an "intolerable burden" for trial counsel to obtain the evidence."

In this case the State suppressed evidence favorable to the Defendant. It did not provide the tape at the hospital where Hudson asked for an attorney. The theory of Hudson is that he was framed by the police. Showing the many incidents that the police lied clearly supports his claim.

On Page 16 of Manion's and Shepardson's report they state that at approximately 11:00pm Manion and Shepardson read Hudson his "Miranda Warnings" and the asked Hudson if he understood his rights and Hudson said yes. They then state at 11:08 PM, Officer Donald Krueger did read Hudson the "Informing the Accused Form" in pursuit of an OWI offense and that Hudson refused at this time to give a sample of his blood. They then state at this point Hudson said: "Don't I have a right to talk to an attorney, what's going on here?" Officer Krueger then told Hudson, "Not at this time and the procedure then continues." (See enclosed page 16 Manion's and Shepardson's report, Exhibit 1).

Attorney James Rebholz argued that Manion and Shepardson falsified their report by claiming that Hudson said, "Don't I have a right to talk to an atty., what's going on here?", arguing that Hudson never said that, that the hospital tapes show Hudson said, " I want to talk to an attorney." (See Rebholz 1-30-09 PCM, Exhibit 2)

However, see attached transcript of the hospital tapes, (Exhibit 3.) On page 11-12, Officer Manion reads Hudson his "Miranda Rights." Then on page 15-16, Officer Krueger tells Hudson is going to read him the "Informing the Accused Form" and starts to read it the form to Hudson. Hudson states, "I want to talk to a lawyer!!" Then on page 19, Hudson states: "Do I have a right to an attorney!" Then on page 20-21, Hudson states: (1) "Don't--what's going on? Don't I have a right to talk to an attorney? What's going on on here." Officer Krueger then states: "Not at this point here, okay. We're going to have to draw some blood. Hudson then states:" I don't have a right at this time--what's going on"?

Manion and Shepardson intentionally and deliberately suppressed Hudson's request for counsel. " I want to talk to a lawyer" from their report to cover up their intentionally "Miranda Violation" by taking Hudson to the Kaukauna Police Department (KPD) to interrogate Hudson after Hudson had invoked my right to counsel while at the hospital!!

Atty. Rebholz was clearly ineffective for failing to raise the "Brady Claim' that Manion and Shepardson intentionally and deliberately suppressed Hudson's highly unequivocal request for an attorney. "I want to talk to an attorney.", from their report shows this. This shows a conspiracy between Manion and Shepardson to intentionally suppress Hudson's request for an attorney while at the hospital to coverup their intentional "Miranda Violation' by taking Hudson to the KPD to interrogate Hudson after Hudson had invoked his right to counsel at the hospital!!

This Brady Claim would have also had a serious impact on the Brady Claim that Manion and Shepardson intentionally and deliberately suppressed State Crime Lab DNA expert, John Ertl's 2nd report dated August 22, 2000, showing that Carnot had the victim's blood on his body!! If Rebholz would have raised this Brady Claim-violation, it would have also shown a conspiracy and would have supported Hudson's other claims that Manion intentionally perjured himself at Hudson's trial by testifying that the audio-video tape of my alleged confession had erased itself!!

If the Court of Appeals and the trial court would have heard this evidence, the Courts would not have concluded and determined that it was harmless error that Hudson's alleged confession was erroneously admitted into evidence!! And, that Hudson's "conspiracy theory was far-fetched" that Hudson was framed by the police!!

Rebholz failing to raise this issue and failing to make an improper argument in his 1-30-09 PCM by claiming that Manion and Shepardson falsified their report by claiming Hudson said, "Don't I have a right to talk to an attorney, what's going on here," because Hudson actually did state that, but after Hudson had said: "I want to talk to an attorney!!"

Under Napue v. Illinois, (Id.), and Bowers v. State, 55 Wis. 2nd 155 (1972), when a prosecutor uses false testimony in a criminal case, including testimony affecting only the credibility of a witness and which does not directly touch on the innocence or guilt of a defendant, it violates the 5th Amendment Due Process Clause of the Fourteenth Amendment of the United States Constitution. This is a much easier standard to reach as compared to a Brady claim which may be subject to a harmless error analysis. Attorney Rebholz was ineffective for failing to make this argument. The testimony and evidence show that Biskupic and Schneider knew that false testimony was being submitted to the Court and there facilitated it.

C. HUDSONS' POST-CONVICTION COUNSEL ATTY. JAMES REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE IN HUDSON'S 1/30/09 PCM ON DIRECT APPEAL THAT OFFICER REIFSTECK PROVIDED FALSE TESTIMONY AT TRIAL AND THAT THE STATE THE STATE KNOWINGLY AND INTENTIONALLY PRESENTED THE FALSE TESTIMONY AND FAILED TO CORRECT THE FALSE TESTIMONY AND DID NOT ARGUE NAPUE V. ILLINOIS AND VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

A defendant's due process rights are violated when the State uses evidence at trial that it "knew or should have known" was false, or failed to correct evidence it knew was false. Napue v. Illinois, 360 U.S. 264, 269 (1959); United States v. Agurs, 427 U.S. 97, 103-104 (1976). This is true even where the false testimony goes to the credibility o f the witness rather than directly to the guilt of the defendant. Nape, at 269. This duty applies not only to prosecutors, but all "representatives of the State." Napue, at 269. See also Pyle v. Kansas, 317 U.S. 213, 216 (1942) (attributing the duty to "state authorities"); Mooney v Holohan, 294 U.S. 103, 112 (1935) (attributing duty to "the State"); Smith v. Florida, 410 F.2d 1349, 1350-51 (St Cir. 1969) (applying this duty to police officers who suborn perjury even without the prosecutor's knowledge); Curran v. Delaware, 259 F.2d 707, 713 (3d Cir. 1958) (Adopting Pyle, and finding that law enforcement officers violated their constitutional duty by suborning perjury).

The use of perjured testimony is subject to "strict standard of materiality." Agurs, 427 U.S. at 104. The conviction must be set aside if there is "any reasonable likelihood that the false testimony could have affected the judgment of the jury." Id., at 103. "Implicit" in the requirement of materiality "is a concern that the suppressed evidence might have affected the outcome of trial." (emphasis added). Id., at 104. The court's use of the subjunctive "might" indicates "possibility, not necessarily actuality... Ouimette v. Moran, 942 F.2d 1, 10 (Ist Cir. 1991). Prejudice to the defendant is further "sharpened" when the prosecutor relies on such evidence in its summation, or even if the statements the prosecutor makes are factually true, "mislead[s] [the jury] based on the natural and probable inferences it invites." Jenkins v. Artuz, 294 F.3d 284, 294 (2nd Cir. 2002). Also see State v.Whiting, 136 Wis. 400, 402 N.W. 2nd 723 (Ct. App. 1987)

On the 2nd day of trial, "right after a lengthy lunch break after officer Patschke testified falsely about the knife and Hudson had accused him that the knife was planted in his truck," Biskupic knowingly elicited false testimony from Officer Reifsteck. First, Biskupic elicits testimony from Reifsteck that he and his partner "Jackson" were involved in the chase and arrest of Hudson. (See Exhibit 4) Right after Reifsteck described the chase and arrest, Biskupic showed Reifsteck State's trial "Exhibit 39" (Exhibit 8) and asked him if he recognized the exhibit. Reifsteck answered: "Yes, that it depicts Hudson's truck at the scene where it was stopped." Biskupic then Reifsteck if his squad car was depicted in "Exhibit 39"! Reifsteck answered: "Yes it is, " and then Biskupic had him "point out to the jury where his squad car was depicted in the exhibit" which was a photo of the scene. (See Reifsteck's testimony at page's 324-325).

Biskupic clearly knew that "Ex.39" didn't depict Reifsteck's squad car parked next to Hudson's truck at the time he was pulled over, because the first roll of film that was taken by Outagamie County Sheriff's Dept. (OCSD) evidence technician. Officer Dan Pamenter of Hudson's truck at the scene where he was pulled over, clearly proves that "Reifsteck's squad car was not parked next to the truck when Pamenter first arrived at the scene, which was approx. 20minutes after Hudson was pulled over," and in addition, the squad car that is depicted next to Hudson's truck in "Ex.39" doesn't appear at the scene until the **2nd roll of film that was taken by Pamenter!!!** (See Exhibit 11).

Right after Biskupic showed Reifsteck "Ex.39", he asked Reifsteck if he made any observations to Hudson's truck after he was taken into custody. Reifsteck answered: "Yes, that after Hudson was taken into custody, he went back to the truck because it was still running-racing very hard, so he reached in through the driver's side window to turn off the ignition, and he looked down and saw a large knife laying on the driver's side floor under the brake pedal." Biskupic then asked him "how long was it after Hudson was removed from the truck and he found the knife, under a minute"! Reifsteck answered: "within 2 minutes." (See Reifsteck's testimony at page's 324-325). Biskupic then asked him "if anyone else was with him when he approached the truck and found the knife." Reifsteck answered: "yes, that officer Patschke approached the truck at approx. the same time he did, but no other officer did however, and he then informed Patschke about his finding the knife." (See Reifsteck's testimony at page 326).

Nowhere in Reifsteck's written report does he ever even state that (1) he ever even saw a knife in Hudson's truck: (2) he never even states he found the knife in the truck: and (3) he never states that he ever even told Patschke about finding the knife," he never mentions anything about a

knife in his report!!(See Ex. 7). Reifsteck's report was turned over to the Defendant's Attorney prior to trial, however, it was never used or referred to at trial. Atty. Cook entered his report into evidence after trial as part of his 10/30/05 discovery motion reply. Most critically, Officer Patschke had already previously testified at the 7/20/00 preliminary hearing that "he was the one who found the knife in Hudson's truck, after Hudson was removed from the truck and was placed into the back of the squad car and he went back to the truck to do a visual and that's when he found the found." (See ex. 5, page 73 Patschke's prelim testimony). In addition, Patschke never, ever testified at the preliminary hearing or at trial that Reifsteck was the one who found the knife while reaching in through the window and he then informed him about his finding the knife."! Furthermore, there is absolutely nothing in the police reports, nor did any other officer ever testify or state anywhere that Reifsteck found the knife.

Also most significantly, Biskupic had told the jury in his opening statement (the day before Reifsteck testified) that officer "Patschke was the one who found the knife in Hudson's truck, as he approached the truck as (Hudson was being taken out, "removed"), from the truck! Biskupic never, ever told the jury that "Reifsteck found the knife while reaching in through the window to turn the truck off and he then immediately told Patschke about his finding the knife." Biskupic just clearly tells the jury that "they'll learn that the evidence will show Patschke found-sees the knife as he approached the truck as Hudson was being taken out of the truck." (See enclosed page 185 Biskupic's opening statement, Exhibit 6)

Biskupic and Schneider clearly knew that Reifsteck was lying when he said that "he found the knife while reaching in through the window and he then immediately told Patschke about his finding of the knife," because they clearly knew from the prelim hearing that Patschke said "he found the knife" and that's why Biskupic had told the jury in his opening statement that Patschke was the one who found the knife, and despite this, he and Schneider allowed Reifsteck to knowingly testify falsely!! They should have immediately corrected his false testimony to the Court & jury!! They didn't do it because they were using his false testimony to refute Hudson's claims to Patschke that the knife was planted!!

Atty. Carns should have also immediately exposed Reifsteck's false testimony to the Court and just after being reinstated on the 4th day of trial, because he clearly should have known that Patschke said he found the knife at the preliminary hearing, and he also heard Biskupic tell the jury in his opening statement that Patschke found the knife!! But Attorney Carns was unprepared to try the case which he told the Court, (See Exhibit 21) Atty. Carn's told the Court when the Court told him it was going to be re-instating him as my counsel, that: He doesn't feel that he can go forward on this case. "I'm, I'm totally unprepared."

On the last day of trial, Carn's told the Defendant he wasn't going to argue to the jury in his "closing argument" that he was "innocent-framed by the police", so I told him I didn't want him to do the closing argument, that Hudson wanted to do it then. Carns advised the Court about this and the judge asked him how his closing argument was going to differ from Hudson's. Carns told the Court: "I was not—just to make it very clear, I - - I was not going to discuss any conspiracy theory, any planting of the evidence, any real discrepancy in the evidence because the cross-examination that he did himself doesn't lead us to being able to argue that, and I certainly for the record, didn't think the Court would allow Hudson to call all those witness back to cross

examine! The Court then instructed Carns to do the final argument, over Hudson's objection! (Exhibit 22)

On cross-examination of Reifsteck, Hudson showed Reifsteck my trial "Exhibit 124" (which was the exact same photo as "Ex.39" but it was just a smaller size photo 4×6, Exhibit 8) and Hudson asked him who's squad car was depicted in the photo parked next to his truck. Reifsteck answered: "that it was his squad car in the photo where he positioned it at the time Hudson was pulled over"! (Exhibit 4). Hudson then asked Reifsteck if the "driver's side door of his truck was (closed) when he reached in the driver's side window to turn the truck off and he found the knife." Reifsteck said: "it was closed"!! Reifsteck's written report, and "he never even states anywhere in his report that he ever reached in through my truck window to turn it off because it was still running-racing very hard"! If he did do that as he said he did at trial, it would have been in his report!!

Officer Jackson testified the following day after Reifsteck, and he testified that "the driver's side door was (open) when he saw the knife right after Hudson was removed from the truck'!! (See Jackson's trial testimony at page 164, which is contained in Jackson's false testimony issue). This contradicts Reifsteck's testimony the "door was closed" when he found the knife. There is nothing in the record that the "door was closed after Hudson was removed, and then reopened before the other officers saw the knife!! In addition, Biskupic told the jury in his opening statement that "Patschke saw the knife as Hudson was being taken out of his truck,'" which the "door had to be open at that time, when Patschke allegedly found the knife"! (Exhibit 6)

After trial, Hudson's Atty. David Cook filed a discovery motion with the trial Court specifically demanding that the State turn over officer Pamenter's "Index Photos" for the 3plus rolls of film that he took at the scene of Hudson's arrest" which the Court granted. First, most significantly, the first roll of film that Pamenter took at the scene clearly shows that there is no squad car parked next to Hudson's truck in any of the photos on the first roll of film!! (Exhibit 11). The index photos for Pamenter's first roll of film was entered into evidence at the 3/13/08 discovery hearing by atty. Rebholz, as "Exhibit 1", R. 296: Ex.1. "Photo # 9 ' (blown up 8x10 photo) on the index photos for the first roll of film taken by Pamenter. This photo clearly shows that there is "no squad car parked next to Hudson's truck"!! Photo #8" (blown up 8x10 photo) on the index photos for the Ist roll of film taken by Pamenter. This photo also clearly shows that there is "no squad car parked next to Hudson's truck"!! (Exhibit 11)

"Index Photos" for the "2nd roll of film" that was taken by Pamenter. State's trial "Ex.39" (Attachment 8) is actually "photo #6" on the index photos or Pamenter's 2nd roll of film. This clearly proves beyond any doubt whatsoever that "there wasn't a squad parked next to Hudson's truck when Pamenter first arrived a t the scene, because the squad car that is depicted in State's "Ex.39" next to Hudson's truck, doesn't appear at the scene until the 2nd roll of film taken by Pamenter!! These index photos and blown up photos from the index cards clearly prove beyond any doubt whatsoever that Reifsteck knowingly and intentionally testified falsely at trial when he said (twice, once during direct, and once on cross) that "Ex.39" and "Ex.124" depicted his squad car parked next to Hudson's truck at the time I was pulled over, because (1) there isn't even a

squad car parked next to Hudson's truck in Pamenter's 1st roll of film, and (2) the squad car that appears next to my truck doesn't appear at the scene until the 2nd roll of film.

It must be extremely noted that there is no proof that the squad car that appears next to Hudson's truck in "Ex.39" is even Reifsteck's squad car, because there were 3 other squad cars at the scene who were actually involved in the chase and arrest, Zolkowski, Dale Knauer, and Chad Probst, so it clearly could be one of their squad cars!! In addition, Pamenter testified at the3/13/08 discovery hearing after trial, that "he doesn't know if the squad car in "Ex.39" is actually moving at the time when he took the photo"! (See Exhibit 13)

Officer Pamenter also testified at the 3/13/08 discovery hearing that there "was no squad car parked next to Hudson's truck when he first arrived at the scene, and that the index photos for his 1st roll of film clearly shows that there wasn't a squad car parked next to the truck when he first arrived and took the 1st roll of film! He further testified that State's trial "Ex.39" (the photo Reifsetck testified depicted his squad car parked next to Hudson's truck at the time he was pulled over), "didn't appear at the scene next to Hudson's truck until his 2nd roll of film"!! (See enclosed Pamenter's 3/13/08 testimony a t page's 7, 20-24, R.303, Exhibit 13).

Pamenter's post-trial testimony also clearly proves that Reifsteck knowingly testified falsely at trial when he said that "Ex.39" depicted his squad car parked next to Hudson's truck at the time he was pulled over! The Grand Chute PD "Dispatch Log Report" also clearly shows that Reifsteck and Jackson weren't even dispatched to the scene until "8:01 PM", almost an hour and a half after Hudson was pulled over! (See Exhibit 14). The GCPD Dispatch Log Report clearly corroborates Pamenter's Index Photos for his 1st roll of film, that Reifsteck and Jackson were not even at the scene when Hudson was pulled over!

Hudson was pulled over at "6:34 PM' (See enclosed page 8 of the KPDs' 6/25/00 Detailed Daily Log Dispatch Log Report Ex 12) Now look a t the GCPD Dispatch Los Report. Pamenter was dispatched at "6:40 PM" and he arrived at the scene at "6:50 PM", which was approx. 16 minutes after Hudson was pulled over, and Pamenter said it took him about 5 minutes or so from the time he arrived at the scene to get his equipment and started taking the first roll of film, however, there was no squad car parked next to Hudson's truck during the whole 1st roll of film Pamenter took!!

Biskupic turned over the GCPD dispatch log report to Hudson's attorney prior to trial, however, the one he turned over "dated 7/7/00" didn't have the "name of the dispatcher on it " However, the one Hudson's atty. Brian Figy obtained prior to trial pursuant to his "Open Records Request" did have the dispatchers "name on it. Her name is "Tami Schurer-dispatcher 433". Biskupic suppressed her name, "Tami Schurer', from the dispatch report because he has Hudson's atty.'s talking to her, because she would have verified, she dispatched Reifsteck & Jackson to the scene at "8:01 PM'!! Biskupic never called her to testify at trial either! Nor did any of Hudson's trial or postconviction atty.'s ever talk to her.

Neither Reifsteck nor Jackson are even heard on the actual dispatch tape of the chase, as actually being involved in the chase! All the officers who were involved in the chase and arrest identify themselves by "Badge#! Reifsteck's badge# is "7708" and Jackson's is "7732". However, neither

of them are identified anywhere on the dispatch tape as being involved in the chase. (See section dealing with Mary Schuelke). The dispatch tape completely corroborates the GCPD dispatch log report that Reifsetck and Jackson weren't involved in the chase and arrest because they were dispatched at 8:01 PM. The tape also corroborates Pamenter's index photos!!

The other 2 Grand Chute PD officer 's who were actually involved in the chase and arrest (besides Zolkowski), they state in their reports that "when Hudson was pulled over, they immediately exited their squad cars and approached the passenger side door of Hudson's truck and opened the door and looked inside, however, they never, ever state anywhere in their reports that they even saw a knife in the truck"! (See enclosed Officer Dale Knauer's and Chad Probst's reports Exhibit 17 and 18). Knauer's and Probst's report were turned over prior to trial, however they were never used or entered into evidence at trial! Atty. Cook entered them into evidence and referred to them in his 7/1/05 2nd supp. discovery demand and motion. Biskupic never called Knauer or Probst to testify at Hudson's trial. In fact, "this is huge", Biskupic never even had either of these 2 officers (named in any of his pretrial witness lists) as witnesses he would be calling to testify"!! Biskupic filed "4 witness lists" prior to trial, He filed one on "2/6/01, R.52", the 2nd one on "2/23/01, R.60", the 3rd one on "2/26/01, R.63", and the 4th one on "3/2/01, R.70, just 3 days before trial. See enclosed copy of Biskupic's 4th 3/2/01 witness list. Neither officer Knauer nor Probst are listed as witnesses!! (Exhibit 16)

It must be further extremely noted, that Biskupic didn't include "Reifsteck &Jackson" on his witness lists until the last one he filed on 3/2/01 **just 3 days before trial**! This is extremely significant because Biskupic intentionally "switched" officers Knauer and Probst with Reifsteck & Jackson and had Reifsteck and Jackson testify instead of Knauer and Probst!! Attorney Cook told Hudson that this was significant, that Biskupic didn't call Knauer or Probst to testify because they "refused to go along with the conspiracy, and wouldn't testify they ever saw a knife in my truck, and that they knew the knife was planted on the driver's side floor," so Biskupic had Reifsteck and Jackson testify instead, and that's why Biskupic never had "Knauer or Probst on any of his witness lists and didn't call them to testify, and why he didn't add Reifsteck & Jackson to his witness list until 3 days before trial"!! Cook told Hudson to make sure my successor counsel argues these facts, but Rebholz never did!!!

Outagamie County Sheriff's Dept. officer "Michael Fitzpatrick" who was also actually involved in the chase and arrest, never, ever states in his report that he ever even saw a knife in Hudson's truck"!! (Attachment 19). Outagamie County Sheriff's Dept. Officer Sgt. "David Spaeth" testified after trial at my 3/13/08 discovery hearing that the "Sheriff's Dept.'s Dispatch Log Report also shows that Reifsteck &Jackson were in fact dispatched to the scene at 8:01 PM'! (Attachment 15) Spaeth also testified at this hearing that **he saw the knife laying on the (passenger) side floor like right under the seat where the passenger would sit**, and that he saw the knife within 5 minutes after Hudson was pulled over"'!! This also completely contradicts Reifsteck's testimony that he found the knife on the driver's side!!

D. HUDSONS' POST-CONVICTION COUNSEL ATTY. JAMES REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE IN HUDSON'S 1/30/09 PCM ON DIRECT APPEAL THAT OFFICER JACKSON PROVIDED FALSE TESTIMONY AT TRIAL AND THAT THE STATE THE STATE KNOWINGLY AND INTENTIONALLY PRESENTED THE FALSE TESTIMONY AND FAILED TO CORRECT THE FALSE TESTIMONY AND DID NOT ARGUE NAPUE V. ILLINOIS AND VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5th & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

The factual basis for this claim is above. Jackson clearly provided false testimony. The State failed to provide Hudson with the reports, logs, all the photos and other materials before trial so that he could advance his theory of being framed. The State has a duty to correct false statements of witnesses. They did not. They encouraged it. Napue v. Illinois, (Id.) and the reasoning of State v. Wayerski, (Id.) should have been argued by Attorney Rebholz.

E. HUDSONS' POST-CONVICTION COUNSEL ATTY. JAMES REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE IN HUDSON'S 1/30/09 PCM ON DIRECT APPEAL THAT OFFICER ZOLKOWSKI PROVIDED FALSE TESTIMONY AT TRIAL THE STATE KNOWINGLY AND INTENTIONALLY PRESENTED THE FALSE TESTIMONY AND FAILED TO CORRECT THE FALSE TESTIMONY AND THAT THE STATE UNDER NAPUE V. ILLIOIS VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

On the 2nd day of trial, "immediately following a lengthy lunch break right after officer Patschke had testified and Hudson accused him that the knife was planted in his truck, DA Biskupic called Officer Zolkowski to testify, and Biskupic knowingly elicited false testimony from Zolkowski that "Hudson was still laying on the ground just outside the driver's side door of his truck, and before being moved and placed into the back of the squad car, when officer Patschke told him that there was a knife found laying on the driver's side floor of Hudson's truck"! The following questions- answers were exchanged between Biskupic and Zolkowski:

Q. Now, after you have control of the suspect, was something brought to your attention within the "next seconds-moments"?

A. Well, I know after, after I handcuffed his left wrist, I believe i t was Sgt. Patschke said: Hey, watch it, there is blood all over him. And it was at that time that one of the other officer s went and grabbed some latex gloves.

Q. Did "Patschke bring your attention to anything else soon after that"?

A. Yes he did!

Q. What did he do?

A. "He advised me of a knife that was seen on the driver's side floor area of the vehicle"!

Q. "In reference to where you had the suspect in custody, was that just outside the door, or move him first"?

A. "HE WAS JUST OUTSIDE THE DOOR"!!

Q. And your physically around him at that time?

A. Yes!

Q. So to look into the driver's side of the vehicle of the truck, how far did you even have to move?

A. Within 10 feet!

Q. And what did you notice in the driver's side of the vehicle?

A. On the floor area, just below like the brake pedal area was a "**larger type buck knife**"!

Q. And was Patschke right next to you basically when he points this out to you"?

A. Yes!

(See enclosed Zolkowski's 3/6/01 trial testimony at page's 163-164 Exhibit 24).

Zolkowski clearly stated in his report that the knife he saw in Hudson's truck was a "**smaller type buck knife**" (See Zolkowski's enclosed 7 page report at page 7 Attachment 26), contrary to his trial testimony that it was a "larger type buck knife"!! Zolkowski's trial testimony that officer Patschke had told him there was a knife found lying on the driver's side floor of Hudson's truck within "seconds-moments" after Hudson was removed from his truck, and that "Hudson was still laying on the ground just outside the driver's side door of his truck while he was handcuffing Hudson, and before Hudson was moved and placed into the back of the squad car,'

was clearly and undeniably false based upon the following facts and evidence:

Patschke had testified at the 7/20/00 preliminary hearing that "Hudson was placed into the back of the squad car first after being removed from his truck and handcuffed, before Patschke went back to the truck and allegedly found the knife. Patschke's prelim testimony is as follows:

DA Biskupic: Now, did you, while you were by the vehicle, observe anything in your line of sight on the inside compartment of the vehicle, the truck?

Patschke:

"After the individual was secured and placed in the back of the squad car, went back to do a visual, basically, on the vehicle itself, and the fi r s t observation to the vehicle, a knife was seen on the floor of the front seat." (See Exhibit 5). Officer Patschke also clearly states in his own report that "Hudson was placed into the back of the squad car (first), and then the knife was allegedly found in the truck"! (See Exhibit 26 of Patschke's report)

Therefore, Patschke's prelim testimony and report clearly proves beyond any doubt whatsoever that Zolkowski knowingly and intentionally testified falsely at trial when he testified that "Hudson was still laying on the ground just outside the driver's side door of his truck, and before being moved and placed into the back of the squad car , when Patschke told him that the knife was found in Hudson's truck," because Patschke clearly testified and stated in his report that "Hudson was placed into the back of the squad car before the knife was ever allegedly found"!!

Most critically, Zolkowski also clearly states in his "own report" that "Hudson was placed into the back of the squad car first, and then he (Zolkowski) went back to Hudson's truck and looked inside and he saw a knife laying on the driver's side floor"!! (See Ex 26, Zolkowski's report at page's 6-7). Zolkowski "never states in his report that Patschke ever even told him there was a knife found in Hudson's truck. He just very clearly states that he went back to Hudson's truck (after Hudson was placed into the back of the squad car) and that he looked inside and that's when he first saw the knife"!! Zolkowski's "own report" further proves beyond any doubt whatsoever, that he knowingly & intentionally testified falsely at trial, because he states in his own report that "Hudson was placed into the back of the squad car first , before he went back to Hudson's truck and looked inside and that's when he first saw the knife" in complete contradiction to his trial testimony that "Hudson was still laying on the ground just outside the driver's side door of his truck when Patschke told him the knife was found in the truck"!!

Biskupic also knowingly and intentionally elicited the false testimony from Zolkowski by having and allowing him to testify that Hudson was still laying on the ground just outside the driver's side door, and before being moved and placed into the back of the squad car, when Patschke told him about the knife, because Biskupic clearly knew that (a) Patschke had testified at the prelim and stated in his report that "Hudson was placed into the back of the squad car first, before Patschke went back to the truck and he found the knife,"; and (b) Biskupic knew that Zolkowski stated in his own report that "Hudson was placed into the squad car first, before Zolkowski went back to the truck and looked inside and saw the knife"!!

In addition, DA Schneider also clearly knew that Zolkowski testified falsely because (a) she was present at the prelim hearing and heard Patschke's testimony, and (b) she had possession of

Patschke's and Zolkowski's reports, and despite knowing this, she failed to correct Zolkowski's false testimony!! Zolkowski's knowing and intentional false testimony clearly prejudiced Hudson because it was used to refute Hudson's trial defense to the jury that the knife was planted in Hudson's truck, because based on Zolkowski's false testimony, the knife couldn't have been planted because there wasn't enough time for the office's to plant the knife, because Patschke allegedly told Zolkowski the knife was found "within seconds-moments after Hudson was removed from his truck and while Hudson was still laying on the gound-before being moved and placed into the back of the squad car"!! The jury was clearly misled into believing the knife couldn't have been planted because the "knife was found within seconds-moments after Hudson was removed from the truck"!!

Zolkowski also knowingly and intentionally testified falsely at my trial when he testified that (a) he had left the scene already before Outagamie County Sheriff's Dept. Evidence Tech. officer Dan Pamenter had arrived at the scene of Hudson's arrest, and (b) when he testified that "he was only at the scene of Hudson's arrest for approx. 10 minutes after Hudson was pulled over and he saw the knife in the truck, which was also completely false. Here is the false testimony exchanged between Biskupic and Zolkowski:

Q. Now soon after you had the suspect in custody, was there arrival of a Sheriff's Department evidence officer?

A. "No, there wasn't"!

Q. Are you familiar with a Dan Pamenter?

A. Yes, I am.

Q. "And is it correct that he showed up soon after you were there"?

A. "I had left the location already"!!

Q. How long did you even stay there after the suspect was taken into custody?

A. "It wasn't that long at all after he was handcuffed and placed into the back of officer Reifsteck's squad car. I left probably within 10 minutes"!!

(See enclosed Zolkowski's trial testimony at page's 165-168, Exhibit 24).

Zolkowski clearly testified falsely when he said that "he was only at the scene approx. (10minutes) after Hudson was pulled over and he saw the knife and then left the scene" because he was actually, at the scene for "26 minutes" after Hudson was pulled over, because (a) Hudson was pulled over at "6:24 PM", see the Kaukauna PD 6/25/00 Detailed Daily Log Report at page 8, where it clearly states that "Hudson took the ditch at 6:24 PM" (Exhibit 12), (b) the state's own criminal complaint also states that Hudson was pulled over at "6:33 PM', and (c) the Grand Chute PD Detailed Dispatch Log Report clearly shows that Zolkowski left-cleared from

the scene at "7:00 PM' (Exhibit 14) which proves that Zolkowski was at the scene for "26 minutes" and not "10 minutes" testified to!!

Zolkowski also clearly testified falsely when he said that "he had already left the scene, before officer Pamenter had arrived at the scene", because (a) the Grand Chute PD Dispatch Log Report clearly shows that Pamenter was dispatched at "6:40 PM' and that he then arrived at the scene at "6:50 PM", which was "10 minutes before Zolkowski had left the scene". In addition, Pamenter also clearly testified at trial that he was dispatched at 6:40 pm and that he arrived at the scene approx. 5-8 minutes later"!! (See Pamenter's3/6/01 t r i a l testimony a t page's 175-177, enclosed in Pamenter's false testimony issue)

Hudson was clearly prejudiced by this false testimony by Zolkowski, because it was clearly used to refute his defense that the knife was planted, because they intentionally "misled the jury into believing that the knife couldn't have been planted because there wasn't enough time for the knife to have been planted, because the knife was found within seconds-moments after Hudson was removed from the truck and Zolkowski saw the knife and left the scene within 10 minutes"!!

This is exactly what DA Schneider even argued during Hudson's post- proceedings, she clearly argued to the trial Court at the May 27 , 2003 DNA hearing , that "the knife couldn't have been planted in Hudson's truck because officer Zolkowski immediately sees the knife in Hudson's truck right after Hudson was removed from the truck, and because Zolkowski was only at the scene for "10 minutes after Hudson was pulled over and he saw the knife and then left the scene"!! (See enclosed Schneider's arguments to the Court at the 5/27/03 hearing at page's 154-158).

Hudson's trial counsel atty. Carns was also clearly ineffective for "failing to advise the Court & jury that Zolkowski had intentionally testified falsely" because based upon all of the above facts and evidence, Carns clearly knew or should have known Zolkowski testified falsely because (a) he had the prelim hearing transcript, (b) he had Patschke's and Zolkowski's reports, and (c) he prelim hearing criminal complaint which Stated Hudson was pulled over at 6:33 PM, and he also had the Grand Chute PD dispatch log report!!

Carns told the Court on the 4th day of trial when the Court told him it would be re-instating him as Hudson's counsel, that (a) he didn't want back on the case because "he was totally unprepared"; and (b) that he wasn't going to be arguing any conspiracy defense, that the evidence was planted, Etc." He also told the Court on the last day of trial that (a) he wasn't going to be arguing Hudson's defense of innocence-being framed, no planting of evidence, because the testimony by the officer's and the cross- examination done by Hudson, "didn't show that there were any real discrepancies in their testimony"! (See the 3/8/01 &3/9/01 Carns arguments to the Court)!!

Hudson's postconviction counsel atty. James Rebholz was also clearly ineffective for failing to raise all the above issues in Hudson's PCM on direct appeal, because he had all the above facts-evidence-documents, during his direct appeal, therefore, he clearly knew or should have known about all of the above perjury-misconduct! He didn't argue the "Napue Claim"

F. HUDSONS' POST-CONVICTION COUNSEL ATTY. JAMES REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE IN HUDSON'S 1/30/09 PCM ON DIRECT APPEAL THAT OFFICER ZOLKOWSKI PROVIDED FALSE TESTIMONY AT TRIAL UNDER BRADY THUS VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

Under State v. Wayerski, (Id.) the Wisconsin Supreme Court modified the "Brady Claim" standard. The Court noted, "A Brady violation has three components: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the evidence must be material." All the above evidence is favorable to both exculpatory and impeaching. It was suppressed by the State willfully. The evidence is material. It goes to the heart of the case. Who is lying, Hudson or the police? This evidence and further evidence which will be provided answers that question unequivocally that the police were involved in a conspiracy.

G. ATTY. REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE THAT OUTAGAMIE COUNTY SHERIFF'S DEPT. EVIDENCE TECHINICIAN OFFICER DAN PAMENTER KNOWINGLY AND INTENTIONALLY REPEATEDLY PERJURED HIMSELF AT HUDSONS' TRIAL REGARDING THE ALLEGED MURDER WEAPON "KNIFE TO REBUT HUDSON'S CLAIMS THATTHE OFFICERS PLANTED THE KNIFE IN HIS TRUCK TO FRAME HIM FOR THE MURDER, THE STATE KNOWINGLY AND INTENTIONALLY PRESENTED THE FALSE TESTIMONY AND FAILED TO CORRECT THE FALSE TESTIMONY AND THAT THE WHEN HE REPEATEDLY TESTIFIED THAT "AFTER HE HAD REMOVED THE KNIFE FROM HUDSON'S TRUCK AND PACKAGED IT UP FOR EVIDENCE, THAT HE THEN WENT BACK TO HUDSONS' TRUCK AND HE TOOK MORE PHOTOGRAPHS OF THE INSIDE OF THE TRUCK,INCLUDING THE DRIVERS SIDE AREA' AS WELL AS SOME MORE PHOTOS OF THE OUTSIDE OF THE TRUCK' WHICH WAS UNDENIABLY FALSE AND THAT THE STATE, BISKUPIC AND SCHNEIDER, KNEW THAT IT FALSE AND FAILED TO CORRECT IT UNDER NAPUE V. ILLINOIS AND VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

On the 2nd day of trial, during direct examination by Biskupic, Kaukauna PD Officer Sgt. Robert Patschke testified how he and the other officers allegedly found the murder weapon-knife laying on the driver's side floor of Hudson's truck after they had pulled him over and removed him from

his truck. Patschke further testified that after they had found the knife in Hudson's truck, that officer Pamenter was dispatched to the scene to take photos and to collect the knife from the truck as evidence. Biskupic then showed Patschke numerous photos that were taken by Pamenter and asked him if the photos accurately depict the knife how they found it in the truck. Patschke answered yes. (See Patschke's trial testimony contained in Patschke's perjured testimony issues, at page's 50-107) R. 137:PP. 50-107).

During cross-examination, Hudson accused officer Patschke and argued to the court and the jury that he and the other officers had planted the knife in his truck after they pulled him over to, frame him for the murder. Hudson showed Patschke 2 photos that were taken by Pamenter and argued that they showed the knife was planted because 1" photo first didn't show a knife in his truck ,and then the other photo later did show a knife in his truck" (See Patschke's trial testimony at page's 115-135, R. 137: PP. 115-135). Also see enclosed Appleton Post Crescent News Article Dated3-6-01, See Caption: "Hudson claims police planted knife. "

On re-direct examination, Biskupic asked Patschke that wasn't it correct that Patschke had directed officer Pamenter to package up the knife from Hudson's truck after photographing it? Patschke answered that was correct! Biskupic then asked Patschke that wasn't it correct that the knife was the one piece of evidence that was ultimately moved at some point from Hudson's truck. Patschke answered that was correct. Biskupic then asked Patschke if he knew how many photographs that Pamenter would have taken before the packaging of the knife, and after the packaging of the knife. Patschke answered that he didn't know how many, that that was in Parmenter's hands. (See Patschke's trial testimony at page 136, R.137:136). Biskupic then asked Patschke if he had arranged for the knife to planted in Hudson's truck. Patschke answered no (see page 137, Patschke's testimony, R.137:137).

Immediately after Patschke finished testifying, the Court excused the jury, and a lengthy lunch break was held "about a n hour or more.' (See Patschke's testimony at page's 1/1-142, .R 137:141-142). Shortly after the Court reconvened after the lengthy lunch break, Biskupic called officer Pamenter to testify. What happened next was an abuse of the criminal justice system of the worst kind, Biskupic repeatedly elicited perjured testimony from Pamenter regarding the alleged murder weapon-knife to rebut Hudson's defense-claims that t h e certain photographs showed that the officers had planted the knife in his truck to frame him for the murder. Below is the following questions and answers that were exchanged between Biskupic and Pamenter:

Biskupic: Now, after you took some initial photographs of the knife (laying on the drivers side floor of Hudson's truck), did you play a role in, in taking custody of that knife, or packaging it?

Pamenter: Yes, I did.

Biskupic: And what did you do?

Pamenter: I removed the knife from the truck and placed it into a brown paper wrapping.

Biskupic: Did you take some individual photos of the knife?

Pamenter: After I removed the knife, I placed it on the paper and then I photographed it more close-up views of the knife, before I wrapped it up.

Biskupic: "After the knife was packaged, what did you continue to do"?

Pamenter: "I photographed the rest of the interior of the truck and also some more areas outside the truck".

Biskupic: "After the knife was packaged, did you take more photos inside the truck"?

Pamenter: "Yes".

Biskupic: Do you know approximately how many rolls of film you took at that scene?

Pamenter: Three-and-a-half rolls.

Biskupic: "Several photos were before the packaging of the knife, and several were after"?

Pamenter: "That is correct"! (See enclosed Pamenter's trial testimony, at page's 175-181. Exhibit 28)

On cross-examination, Hudson repeatedly showed officer Pamenter defense exhibits 126 and 127 and Hudson asked Pamenter if he sees a knife laying on the driver's side floor in "ex. 126" and Pamenter answered: "' no, he didn't see a knife laying on the floor in ex.126. Hudson then asked Pamenter what he now saw laying on the floor in Ex. 127. Pamenter said he sees a knife laying on the floor". (See enclosed Pamenter's trial testimony at page's 182, 187-189, Exhibit 28). On re-direct examination, Biskupic asked Pamenter the following questions to which Pamenter answered:

Biskupic: Sgt. When you took the photographs, three rolls of film, the order you took the photographs aren't in the same order that Mr. Hudson showed you the photographs, correct?

Pamenter: I couldn't tell, without seeing the actual negatives.

Biskupic: "But it's correct, after you removed the knife, you took more pictures of the driver's side area, correct""?

Pamenter: "I did take some."

Biskupic: And when you took photographs, correct that you didn't plant a knife there, correct?

Pamenter: "That is correct".

(See enclosed Pamenter's trial testimony at page's 189-190. Exhibit 28)

During Hudson's direct appeal, Hudson requested his attorneys, Jonathan Smith, David Cook, Chris Gramstrup and James Rebholz to obtain a copy of the negatives for the rolls of film that were taken by officer Pamenter, however, none of his attorneys would obtain the negatives for him. 15 years after Hudson's trial, and 5 years after his direct appeal had passed, Hudson requested his attorney Steven Miller to obtain a copy of the negatives for Pamenter's rolls of film because Hudson believed that Pamenter had lied at his trial about taking more photographs of the inside of his truck after he had removed the knife from the truck. On January 27, 2016, Attorney Miller sent DA Carrie Schneider a letter requesting her to allow Hudson's investigator, Ira Robins, to view and photograph the negatives for Pamenter's rolls of film. (Exhibit 29). However, Schneider never responded to Miller's request. OnFebruary2, 2016, Miller sent Judge Gill a letter requesting him to order Schneider to produce the negatives so Hudson's investigator could view and photograph the negatives. The court granted Miller's request. (See Exhibit 29). On February 8, 2016, Miller sent Schneider a letter informing him that Gill granted his request to have Hudson's investigator to view and photograph the negatives. (See Exhibit 29).

Investigator Robins then went to the Outagamie County Sheriff's Dept. in February,2016, and he viewed and photographed all the negatives for the rolls of film that were taken by officer Pamenter. Investigator Robins found that 2 photos, 00 and 0 were photos of the interior of Hudson's truck in the area of the driver's floor and that those photos were never turned over to Hudson.As to roll 1, The negatives conclusively prove beyond any doubt whatsoever that Pamenter repeatedly perjured himself at trial by testifying that he did in fact take more photographs of the "inside of Hudson's truck" after he had removed the knife from the truck and packaged it up for evidence, because the negatives show that Pamenter didn't take any more photographs at all at the scene after he had removed the knife from the truck and packaged it up for evidence, because the very next photo that Pamenter took after he had removed the knife from the truck and packaged it up for evidence was of the "victim at the morgue"!! (See Exhibit 30)

Officer Pamenter knowingly and repeatedly perjured himself at Hudson's trial by repeatedly testifying that he did in fact take more photos of the inside and the outside of Hudson's truck after he had removed the knife from the truck and packaged it up for evidence. The physical evidence on the 4th roll proves that Pamenter lied. Biskupic knowingly elicited and used Pamenter's perjured testimony to rebut Hudson's claims-defense that the officers had planted the knife in his truck to frame him. Biskupic had the negatives. He knew that Pamenter could only answer by lying in court. Biskupic knowingly allowed Officer Pamenter to lie to damage Hudson's defense. Biskupic and Schneider intentionally failed to correct Pamenter's repeated perjured testimony in order to avoid a possible acquittal because they clearly knew that if they did correct Pamenter's perjured testimony, it would have supported Hudson's defense that the officers planted the knife in his truck and framed him for the murder. Biskupic and Schneider intentionally encouraged and facilitated perjury for the purpose of getting a conviction.

It must be extremely noted that Judge Gill acknowledged at the June 12, 2018, hearing on Hudson's pro se discovery demand and motion that the negatives he ordered the State to disclose to attorney Miller in 2016 revealed that Officer Pamenter had knowingly and repeatedly perjured himself at Hudson's trial and that Biskupic used his perjured testimony to rebut Hudson's defense that the officers planted the knife in his truck. In addition, the DA Melinda Tempelis "did not and

could not refute or deny Hudson's claims and Judge Gill's acknowledgment at the June12, 2018 hearing that the negatives proved Pamenter repeatedly perjured himself at trial!! (See June 12, 2018 hearing Transcript at pages 25-27). Judge Gill has already made a factual finding that Biskupic used false testimony. Biskupic, under Napue, violated Hudson's right to due process under the 14th Amendment of t he U.S. Constitution and the Wis. Constitution.

H. ATY. REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE "BRADY CLAIM-ISSUE' THAT THE STATE, PAMENTER, BISKUPIC AND SCHNEIDER KNOWNIGLY AND DELIBERATELY FAILED TO DISCLOSE THREE EVIDENCE "INDEX PHOTOS AND THE ACTUAL NEGATIVES" FOR THE ROLLS OF FILM THAT WERE TAKEN BY PAMENTER WHICH WOULD HAVE "IMPEACHED, VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION REFUTED AND EXPOSED PAMENTER'S REPEATED PERJURED TESTIMONY

On July 31. 2000. DA Biskupic turned over the State's "First Itemized Pretrial Discovery Packet" to Hudson's defense attorneys Brian Figy and Eugene Bartman. This packet did not contain any photographs (Exhibit 52). On August 2, 2000, Figy and Bartman's "Investigator", Terry Young sent Figy and Bartman a letter-memo advising them that the State had not turned over "any photographs" in its July 31, 2000, discovery packet, as well as numerous other items of evidence, reports, etc., that were missing from the packet. (See Ex.72). On August 9, 2000, atty. Figy filed a "Discovery Demand and Motion" with the State (Biskupic) and the trial Court, specifically demanding that the state over copies of all photographs that is in its possession." On August28, 2000, Biskupic sent Figy and Bartman the States "Second Pretrial Itemized Discovery Packet.' however, this packet did not contain any photos!! But, Biskupic did tell Figy and Bartman that if they wanted to view any of the "photographs" mentioned in the reports, for them to contact him (See Ex. 73) In response to Figy's October 10, 2000 Notice of Motions and Motions in Limine, Biskupic fi l e d a "Speedy Trial Demand" with the Court on October 13, 2000 telling the Court that the State "had turned over all of the discovery in the case to the defense in 2 packets dating 7-28 and 8-28-00" (Ex. 75) This was a lie. No photos or dispatch tapes were provided along with many other items.

On September 29, 2004, atty. Cook sent the Outagamie County Sheriff's Dept. Record Custodian "Kari Parker" a letter requesting her to provide him with copies of the "Index Photos" for officer Pamenter's rolls of film that he took at the scene of Hudson's arrest (Ex. 76 On September 29, 2004, atty. Cook sent KPD Asst. Chief "John Manion" a letter requesting copies of all the "Index Photos" for all the rolls of film that were in their possession that were taken at the crime scene, Etc. (Ex. 77)

In 2016, after Hudson's direct appeal had passed, Hudson requested his atty. Steven Miller to have his investigator "Ira Robins" to go and view all the negatives and to photograph them for the rolls of film that were taken by officer Pamenter, because Cook refused to do so.

Miller asked Schneider to allow his investigator to photograph the phots and negatives in the Matter, but Schneider refused to respond. (Ex.78) On February 2 ,2016, atty. Miller sent Judge Gregory Gill a letter advising him that he had requested Schneider to allow his investigator to view and photograph the negatives for officer Pamenter's rolls of film but that Schneider had not responded to his request and that he wanted Judge Gill to order Schneider to allow this to happen, and Gill granted Miller's request (Ex. 79) As soon as Hudson reviewed the negatives for officer Pamenter's "4th roll of film, Hudson realized that the negatives showed that Pamenter had repeatedly perjured himself at trial when he repeatedly testified that "after he had removed the knife from his truck and packaged it up for evidence, that he then went back to Hudson's truck and took more photos of the inside and outside of the truck," because the negatives prove-show that after Pamenter had removed the knife and packaged it up for evidence in the sealed evidence bag, that he didn't take any more photos at all at the scene, because the very next photo Pamenter took after he had packaged the knife in the evidence bag was of the "victim at the morgue."!!

That based upon all the above facts and evidence, this proves that the State, Biskupic, Schneider and Pamenter intentionally failed to disclose the highly exculpatory "Index Photos" to Hudson prior to and during trial which prevented Hudson from exposing Pamenter's repeated Perjured testimony to the Court and the jury!! The above facts and evidence also prove that atty. Rebholz had the evidence "Index Photos" for Pamenter's rolls of film during Hudson's direct appeal, therefore, he clearly knew or should have known that officer Pamenter had repeatedly perjured himself regarding the alleged murder weapon-knife, and was clearly ineffective for failing to raise (1) the Brady claim that the state intentionally failed to disclose the index photos prior to and during trial, and (2)the separate "Napue Claim "that (a) officer Pamenter committed misconduct by knowingly and intentionally perjuring himself (repeatedly) and (b) that DA Biskupic and Schneider committed misconduct by intentionally "failing to correct" Pamenter's repeated perjured testimony and for knowingly using his perjured testimony!!

Clearly a "Brady Claim" was available to Atty Rebholz as presented above. Pamenter lied when he replied to Biskupic's questioning stating that he went back and took more photos of the truck. The Index Photos shows that this didn't happen. Biskupic had those index photos showing that the next photos were at the morgue and were of t he victim. Biskupic knew that was the case but elicited the false testimony. Atty Rebholz failed to develop and document the "Brady Claim" as noted by the appeals decision in this case (Ex. 68) and by Judge Froelich's decision (Ex. 69).

I. OFFICER PATSCHKE KNOWINGLY AND INTENTIONALLY TESTIFIED FALSELY AT HUDSON'S TRIAL AND AT THE PRELIMINARY HEARING. BOTH DA'S "BISKUPIC & SCHNEIDER" KNOWINGLY AND INTENTIONALLY PRESENTED THE FALSE TESTIMONY, AND FAILED TO CORRECT THE FALSE TESTIMONY INTENTIONALLY FAILED TO CORRECT PATSCHKE'S FALSE TESTIMONY DESPITE KNOWING IT WAS FALSE! HUDSONS' TRIAL COUNSEL ATTY. CARN'S WAS INEFFECTIVE FOR FAILING TO EXPOSE PATSCHKE'S FALSE TESTIMONY TO THE COURT AND JURY. POSTCONVICTION COUNSEL ATTY. REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE SPECIFIC SEPARATE ISSUE

"NAPUE VIOLATION" IN HUDSON'S PCM THAT PATSCHKE HAD "KNOWINGLY TESTIFIED FALSELY AT TRIAL" AND THAT BISKUPIC AND SCHNEIDER FAILED TO CORRECT IT AND VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

At Hudson's prelim hearing, Patschke testified during direct examination by Biskupic regarding the high-speed chase and the knife being found in Hudson's truck after the chase"! On cross-examination by Hudson's atty. Bartman. Bartman vigorously questioned Patschke about the timing of his finding the knife. Patschke first testified that "after Hudson was pulled over, he had called Rosche and asked him to check the victim for any knife wounds because of the knife and blood that was found in Hudson's truck"! Bartman then immediately questioned Patschke about " if he observed the knife first in Hudson's truck, before he called Rosche about stab wounds"! Patschke said that "he saw the knife first, and then he called Rosche to check the victim for knife wounds! (See enclosed Patschke's prelim testimony at at page's 59, 76-85, Exhibit 34).

Now, on the 2nd day of trial, Biskupic presented testimony from Patschke. Patschke first testified about the high-speed chase of Hudson. Biskupic then asked Patschke "if he had received any radio calls from officer Rosche or Swanson during the chase"? Patschke said "yes, he had received several calls from Rosche during the chase indicating that the truck he was chasing might be involved in the incident on Plank Road" (See enclosed Patschke's trial testimony at page's 50-86, Exhibit35). After the 7/20/00 prelim hearing, Biskupic turned over a copy of Patschke's report to the defense on 7/31/00. Patschke claimed in his report (after testifying at the prelim) that the "he had called Rosche and asked him to check the victim for any knife wounds, (after the knife was found in Hudson's truck) and that Rosche had told him he had found 3 knife wounds on the victim at this point)"! See enclosed Patschke's report Exhibit 25).

At trial, Biskupic asked Patschke that, "after Hudson was taken into custody, did he observe anything in plain view in Hudson's truck." Patschke answered "yes, that he observed a bloody knife laying on the driver's side floor beneath the brake pedal." (R137:91-96, Exhibit 35). Biskupic then asked him that, "after he observed the knife in Hudson's truck, did he have any radio contact with officer's Rosche and Swanson who were at the scene on Plank Rd. assisting the victim." Patschke said, "yes, that after he had found the knife in Hudson's truck, he called Rosche and asked him to check the victim for any knife wounds." (See Exhibit 35)

Immediately on cross examination, Hudson asked Patschke if officer Rosche had told him during the chase that the "victim was stabbed." Patschke answered "no." The following questions and answers took place between Hudson and Patschke: Immediately on cross examination, Hudson asked Patschke if officer Rosche had t o l d him during the chase t h a t the "victim was stabbed." Patschke answered "no." The following questions and answers took place between Hudson and Patschke:

Q. During the chase, you said that you were chasing me, did officer Rosche call you during the chase, did he mention any stab wounds to you before you pulled me over?

A. "No, he didn't."

Q. Next question, did officer Rosche tell you that the victim had stab wounds before you found the knife in my truck?

A. "No. "

Q. Next question, they did tell you before you pulled me over that we have a pulseless and breathless. That the vehicle is involved.

A. He indicated that there was a strong possibility that the vehicle I was pursuing was involved in this incident, yes.

(See Exhibit 35)

Hudson then questioned Patschke about whether he had called Rosche. about stab wounds "before he allegedly found the knife in his truck." The following questions-answers were exchanged:

Q. You made mention of the fact that you observed a knife, in your testimony, or your testimony in response to direct questioning, you made some mention that you noticed a knife; is that right?

A. Yes.

Q. Was that "before or after your communication with the other officer about stab wounds."

A. Could you repeat the question?

Q. Sure, you made a radio transmission to talk about possible stab wounds?

A. Yes.

Q. Which happened "first."

A. "The observation of the knife." (See Exhibit 35)

Officer Patschke clearly and undeniably repeatedly and knowingly testified falsely at trial when he testified that "Rosche never told him during the chase, or before he allegedly found the knife in Hudson's truck, that the victim had been stabbed," which was clearly false because (1) Dispatcher Maden testified that she heard officer Rosche state during the chase that the victim had been stabbed and this was a homicide (See Exhibit 36), (2) officer Reis also clearly heard the radio transmission that Rosche made during the chase which stated that the "victim was stabbed and this was a homicide" (See Exhibit 37). Furthermore, officer Swanson also called Patschke

during the chase and told him that the "victim had 3 puncture-stab wounds." (See Exhibit 38). Patschke clearly knew that the victim had been stabbed "before he found the knife," completely contrary to his testimony.

Patschke also knowingly testified falsely when he said that "he had called Rosche and asked him to check the victim for any stab wounds, only after he had found the knife, which was clearly false because (1) Patschke never did call Rosche and asked him to check the victim for stab wounds, because these radio transmissions are not contained in State's trial Exhibit 116 and (2) Patschke already knew "during the chase, and before he allegedly found the knife, that the victim had been stabbed. Patschke's knowing false testimony clearly prejudiced Hudson because it was used to rebut Hudson's defense that the knife was planted in his truck." "Why would Patschke perjure himself at trial, but to rebut his planting of the knife"?? If Patschke is willing to perjure himself, how hard is it to believe that he would also "plant the knife." His false testimony clearly

" could have affected the judgment of the jury, " because under the State's theory, the knife couldn't have been planted because Patschke "didn't even know that the victim had been stabbed, until after he had found the knife, and called Rosche about stab wounds." What if the victim had been "shot," they would have had a hard time explaining the knife in the truck"!

On the second day of trial, after Hudson had accused Patschke of planting the knife in his truck Patschke denied that Rosche had called him "during the chase or before the knife was found in Hudson's truck" and told him that the "victim was stabbed". Biskupic presented testimony from Rosche. Rosche first testified that he was on patrol of the day of the incident when he received a dispatch call that officer Patschke was on a high-speed chase and he was directed to assist him, but within the next few minutes, he received a dispatch call of a female that was laying on the roadway on Plank Road to he diverted from assisting Patschke and immediately drover to Plank Road. Rosche said that when he arrived on Plank Road, officer "Rex Swanson" came in right behind him and they observed a female laying on the roadway and she was not breathing and was covered in blood so he and Swanson began to perform CPR on her and during CPR, they noticed she had "wounds on her that were spewing blood" Biskupic then asked Rosche " if while he and Swanson were rendering aid to the victim, at any point does he have any radio contact with Patschke"! Rosche said: "no, not while he was rendering aid"! Biskupic asked him how long they rendered aid. Rosche said: A minimum of 15 minutes."

Biskupic then asked Rosche that "at some point after he he finished rendering aid to the victim, did he make contact with any other supervisors or officer ' s from his dept. Rosche said yes, that he called in for some help with the scene. Biskupic then asked Rosche, "during, up to this point did you make some contact or try to get in touch with Patschke"!! Rosche said: "I, I believe Sgt. Patschke got in contact with us". Biskupic then asked him: "did you inform him of any concern"! Rosche said: "I explained we believe for one that we had a person that was, believe she was deceased and had possible stab wounds"!! (See Exhibit32)

On Hudson asked Rosche if he was 100% sure that Patschke was the one who got in touch with him, Rosche said: I would have to say yes on that, I'm positive he did"! However, Rosche clearly & undeniably knowingly & intentionally testified falsely at trial when he denied calling Patschke, and that it was actually Patschke who got in touch with him and it was at this point he

told Patschke the victim was deceased and she had possible stab wounds, because it was Rosche who actually called Patschke "during the chase and told him the victim had been stabbed and it was a homicide", based upon the following facts and evidence:

1. KPD Dispatcher Michelle Madden testified after trial at the March 13, 2008 discovery hearing, that she was listening to the chase and she heard both officer ' s "Rosche & Swanson" state that the "victim had been stabbed and it was a homicide"!! (See exhibit 36). Madden's testimony proves that Rosche perjured himself when he denied calling Patschke, and that it was Patschke who called him after the chase and asked him if the victim had any stab wounds!

2. Hortonville PD Officer "Randee Reis" clearly states in his report that he was "listening to the chase as it was coming towards him" and that he heard the (radio transmission) which states that the "victim was stabbed and this was a homicide"! (See Exhibit 37) Reis's report completely corroborates dispatcher "Madden's" 3/13/08 hearing testimony that she heard "Rosche state during the chase that the victim had been stabbed and it was a homicide" and proves beyond any doubt whatsoever that Rosche intentionally testified falsely! Only officer's "Rosche & Swanson" were the only 2 officers who were at the scene on Plank Road at the time during the entire chase which lasted "14 minutes", from "6:20 to 6:34 PM" (See Exhibit 12) Hudson was in custody at 6:34 MP took ditch"! Therefore, only Rosche and Swanson could have made the radio transmissions which officer Reis heard which said the "victim was stabbed and it was a homicide"!! It must be extremely noted that officer "Rex Swanson" also "denied ever calling Patschke or the KPD during the chase or at any time after the chase and said the victim was stabbed"! Now, Rosche's intentional false testimony clearly affected the judgment of the jury, because it was used to corroborate and cover up Patschke's false testimony, because Patschke knowingly and intentionally testified falsely when he testified falsely when that officer "Rosche never called him during the chase, or before the knife was found in Hudson's truck, and told him the victim was stabbed", and when Patschke testified that "he didn't know the victim had been stabbed until (after) the knife was found in Hudson's truck and he then called Roche to have him check the victim for any stab wounds"! Rosche's false testimony was clearly used to '"refute Hudson's claims that the knife was planted in his truck after he was pulled over"!

Furthermore, the prosecutor's "Biskupic and Schneider" knew that Patschke had knowingly testified falsely, because (1) they had possession of Reis's report, (2) they had Madden's log report, (3) Madden's knowledge that Rosche told Patschke during the chase that the victim was stabbed is "imputed to them," and (4) they suppressed both Rosche's and Swanson's radio transmissions from "exhibit 116-audio tape of the chase," and despite knowing this, they intentionally permitted Patschke to testify falsely to the jury!!

Biskupic & Schneider had possession or and intentionally suppressed officer Reis's report from Hudson and his atty.'s prior to trial, therefore, they clearly knew that Rosche had told Patschke "during the chase" that the "victim had been stabbed and it was a homicide" because Reis undeniably heard this radio transmissions during the chase, and despite knowing this, they intentionally used and failed to "correct' Rosche's false testimony! Dispatcher Madden's "knowledge" that she heard "Rosche state during the chase that the victim was stabbed & this was a homicide" is "imputed both to Biskupic and Schneider"and therefore, they clearly "should have known that Rosche's testimony was false"!

Biskupic intentionally had both "Rosche's & Swanson's" radio transmissions which stated the "victim was stabbed and this was a homicide suppressed from state ' s "Exhibit 116-the audio before trial that Hudson's defense was going to be that the dispatch tape of the chase before trial, because he clearly knew he had planted the knife in his truck after he was pulled over"! (See officer Schuelke false testimony issue), which further proves Biskupic & Schneider clearly knew Rosche had testified falsely!

Also, Biskupic intentionally suppressed "Exhibit 116-audio tape of the chase" from Hudson and his atty.'s prior to trial (See Schuelke issue) and also intentionally destroyed the "original reel-to-reel dispatch tape for Ex.116" (See Schuelke issue) to try and cover up Schuelke's, Patschke's, Rosche's and Swanson's false testimony"!! Which further proves Biskupic & Schneider knew Rosche's testimony was false!

Lastly, Hudson's postconviction atty. "Rebholz" was ineffective for failing to specifically raise the "separate Napue violation" that the state "knowingly used false testimony from Rosche to obtain Hudson's convictions"! Rebholz did raise several "brady issues" regarding Biskupic suppressing the "dispatch tape, destroyed the dispatch tape, Etc." which he argued supported Hudson's claims Rosche, Patschke & Swanson "lied at trial" which supported Hudson's defense the knife was planted, but he clearly failed to raise the "more strong issue (Napue violation) which is a "much easier standard to meet for a new trial, than a brady violation"!! Biskupic's and Schneider's outrageous misconduct of intentionally using & failing to correct Rosche's false testimony clearly prejudiced Hudson because it was used to "refute Hudson's defense that the knife was planted, and the police framed him"!

Rosche clearly committed perjury when he said that it was "Patschke who called him to find out if the victim had been stabbed and he told him she did have possible stab wounds", because "this alleged radio transmission is not contained on the dispatch tape Ex. 116" (See the transcript for Ex.116 in Schuelke issue). The state "cannot produce Patschke alleged radio transmission for Rosche asking him to check the victim for stab-knife wounds, because it never happened"!! It was Rosche who called Patschke during the chase and told him the victim had been stabbed!

J. OFFICER ROSCHE KNOWINGLY AND INTENTIONALLY TESTIFIED FALSELY AT HUDSON'S TRIAL AND AT THE PRELIMINARY HEARING. BOTH DA'S "BISKUPIC & SCHNEIDER" KNOWINGLY AND INTENTIONALLY PRESENTED THE FALSE TESTIMONY AND FAILED TO CORRECT THE FALSE TESTIMONY TO CORRECT ROSCHE'S FALSE TESTIMONY DESPITE KNOWING IT WAS FALSE! HUDSONS' TRIAL COUNSEL ATTY. CARN'S WAS INEFFECTIVE FOR FAILING TO EXPOSE PATSCHKE'S FALSE TESTIMONY TO THE COURT AND JURY.

POSTCONVICTION COUNSEL ATTY. REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE SPECIFIC SEPARATE ISSUE "NAPUE VIOLATION" IN HUDSON'S PCM THAT PATSCHKE HAD "KNOWINGLY TESTIFIED FALSELY AT TRIAL" AND THAT BISKUPIC AND SCHNEIDER FAILED TO CORRECT IT AND VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

The argument above covers Officer Rosche's false testimony that the Prosecutors used and failed to correct under Napue. The State didn't turn over exhibit 116 before trial. Later and examination of it shows that it is not a true and accurate copy of the original. There are numerous gaps where the original tape was pause or the exhibit erased. The transcript shows that Patschke never called Rosche after the Chase and asked him to check the victim for stab wounds. And where is the original tape so that a comparison could be made by the Defendant's expert Mr. Cain? Per Mary Schuelke, it has disappeared. The State has either lost it or destroyed it even after a request was made by Atty. Figy to keep the original. This is clearly evidence of a conspiracy by the State.

K. DA BISKUPIC KNOWINGLY AND INTENTIONALLY ELICITED FALSE TESTIMONY FROM OFFICER SWANSON AT HUDSON'S TRIAL DURING DIRECT EXAMINATION BY "HAVING HIM TESTIFY THAT THE REASON WHY HE HAD CALLED OFFICER PATSCHKE DURING THE HIGH SPEED CHASE WAS TO INFORM HIM THAT THE TRUCK HE WAS CHASING MIGHT BE INVOLVED IN WHAT HE AND OFFICER "GERALD ROSCHE" THOUGHT AT THE TIME WAS A (HIT-AND-RUNACCIDENT INVOLVING THE FEMALE ON PLANK ROAD)" TO TRY AND CORROBORATE PATSCHKE'S FALSE TESTIMONY THAT "HE DIDN'T KNOW DURING THE CHASE AND BEFORE THE KNIFE WAS ALLEGEDLY FOUND IN HUDSONS' TRUCK, THAT THE (VICTIM HAD BEEN STABBED AND I T WAS A HOMICIDE),"BECAUSE BISKUPIC CLEARLYKNEW THAT SWANSON DID IN FACT CALL PATSCHKE DURING THE CHASE AND TOLD HIM THAT THE "VICTIM HAD BEEN STABBED" AND IT WAS A HOMICIDE. THIS VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION. POSTCONVICTION COUNSEL ATTY. REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE SPECIFIC SEPARATE ISSUE "NAPUE VIOLATION"

On the 2nd day of trial, "after a lengthy lunch break and officer Patschke had knowingly testified falsely by "denying that he knew the victim had been stabbed during the chase and before Hudson was pulled over and the knife was allegedly found in Hudson's truck, and Hudson accused him that the knife was planted," Biskupic presented testimony from Swanson.

Swanson first testified that on the day of the incident, while on patrol, he received a dispatch call directing him to go to the area of Plank Road by Murphy's Quarry to assist a female that was laying on the roadway, so he then immediately proceeded to that area, and that when he arrived at the scene, he and officer "Rosche" noticed a female laying on the road and they noticed that she was unconscious, pulseless and not breathing and was covered in blood, so they immediately started to perform "CPR" on her. Biskupic then asked Swanson that, "during the course of this time, did he have any further dispatches, or radio to other people"? Swanson replied:

"Uhm, I was attempt to go make contact with Sgt. Patschke who was on a high speed chase on 41, and subsequently onto OO, County OO. I was attempting to inform Set. Patschke that, that it was believed that this vehicle (he was chasing) may be involved in what we thought at the time was a hit-and-run accident.

Biskupic then asked Swanson "if he did radio that out". Swanson answered "yes"! (See enclosed Swanson's trial testimony at page's 241-246, Exhibit 39). Swanson clearly s t a t e s in his own report that during the time he and Rosche were performing (CPR) on the victim, that they "noticed-observed that she had at least 4 stab-knife wounds to her body", which would have been prior to Swanson calling Patschke and allegedly telling him that they thought it was a "hit-and-run accident"!! (See Exhibit40)

Rosche had testified at the 7/20/00 prelim hearing that "during the time he and Swanson were performing CPR on the victim, they had noticed she had at least 4 stab-knife wounds to her

body"!! (See Rosche's prelim Exhibit 33), which further proves Swanson clearly knew "before he called Patschke and allegedly told him the truck he was chasing was involved in what they thought was a hit-and-run accident," that the "victim had been stabbed"!!

Now, during cross-examination by Hudson, Hudson immediately vigorously questioned Swanson about his alleged reasons for calling Patschke during the chase and telling him that it was a hit-and-run accident, and specifically asked him if " he ever told Patschke or the KPD it was a stabbing" which he denied ever telling them that! Below are the following questions-answers between Hudson and Swanson:

Q. Now, you stated at one time that you tried to contact officer Patschke to tell him that it was a "hit-and-run accident, correct?

A. At the time, that is what we believed that, that the vehicle he was chasing, was possibly involved in this "hit, in a hit and run"!!

Q. You never told--did you have to get in touch with him?

A. Officer Patschke was, at the time I believe he was on a different frequency possibly--honestly I don't know if , if I directly made contact with him. I believe "I was contacted more through my dispatch to get message to Sgt. Patschke."

Q. So he was on a different frequency?

A. I believe so.

Q. And you said, you just said that you didn't know if you talked to him, you might have?

A. "I was contacting my dispatch, which was the Kaukauna frequency, to inform the Outagamie County officers, or the Outagamie County Dispatch Center, that this person was possibly

involved, or the vehicle that he was chasing was possibly involved in a "hit-and-run involving this party that we were working on"!!

Q. "DID, DID YOU EVER TELL OFFICER PATSCHKE OR THE KAUKAUNA PD EVENTUALLY THAT IT WAS A STABBING"?

A."MYSELF, NO"!!

Q. "YOU NEVER TOLD OFFICER PATSCHKE THAT ! ?

A. "MYSELF NO"!

Q. "YOURSELF, BUT DO YOU KNOW WHO DID"? "NO, I DON'T"!!

(See enclosed Swanson's trial testimony at page's 249-250, Exhibit 39)!!

However, Swanson's trial testimony that (a) the reason why he tried calling or getting message to Patschke was to tell him the truck he was chasing might be involved in a hit-and-run accident involving the female they were working on, and (b) that he denied ever telling the KPD or Patschke that the "victim had been stabbed" and he did not know who did tell them that, was clearly and undeniably false, based upon the below following facts and evidence:

1) After trial, Hudson's atty. "David Cook" filed postconviction discovery motions with the trial Court & State specifically demanding that the state turn over copies of "all the dispatch reports and police reports" which the state had suppressed from Hudson and his atty.'s prior to trial.

On July 8, 2008 "over 7 years after Hudson's trial," DA "Schneider" finally turned over a copy of Kaukauna PD Dispatch "Michelle Madden's' June 25, 2000 "Detailed Daily Log Report' to Hudson's successor counsel "Rebholz" after Cook withdrew from the case. Well, on page 9 of her report, she clearly states that officer "Swanson Bade #831" called Patschke "during the chase

and told him the truck he was chasing may be involved with the incident on Plank Road and that the "victim has 3 puncture-stab wounds"!! (See Exhibit 12)

The KPD's Detailed Daily Log Report clearly proves beyond any doubt whatsoever that Swanson knowingly & intentionally testified falsely when he (a) testified during direct examination by Biskupic and during cross-examination by Hudson, that the reason why he had tried calling or getting the message to Patschke during the chase, "was to inform him that the truck he was chasing was in involved in what he &Rosche thought at the time was a (hit-and-run accident)", and (b) during cross examination by Hudson, when "he denied ever telling the KPD dispatcher or Patschke that the victim had been stabbed, and when he denied knowing who did tell them the victim had been stabbed," because Swanson clearly knew that "he did in fact call Patschke during the chase and told him the victim had been stabbed-has puncture wounds"!!

2. Dispatcher Madden also testified after t r i a l at the March 13, 2008, discovery hearing that Swanson had in fact told Patschke that the victim had been stabbed-had puncture wounds"!! (See enclosed Madden's 3/13/08 hearing testimony at page's 55, 88-92, Exhibit 41). Madden testified that "Swanson had told Patschke about the victim having puncture wounds, after the chase had ended"!! (See her enclosed testimony at page's 91-92, Exhibit 41). However, as will be proven below, this testimony was clearly false, because Swanson told Patschke the "victim was stabbed during the chase"!! Madden's posttrial testimony further proves Swanson knowingly and intentionally testified falsely, because she clearly testified that "Swanson told Patschke that the victim had puncture-stab wounds", which he denied to the jury ever telling Patschke that!

Prior to trial , Hudson's atty. Brain Figy obtained a copy of Hortonville PD officer "Randy Reis's" June 25, 2000 report through an "Open Records Request", and Officer Reis clearly states

in his report that he was listening to the chase as it was coming towards him and that he heard the radio transmission (during the chase) which stated that the "victim had been stabbed and it was a homicide" and that the chase then continued!! (See enclosed Reis's 2-page report at page 2. Exhibit 42)!!

Officer Reis's report clearly and undeniably proves beyond any doubt whatsoever that Swanson knowingly and intentionally testified falsely when he denied ever telling Patschke or the KPD that the "victim had been stabbed", because Reis clearly heard the radio transmission during the chase which stated that the "victim had been stabbed and this was a homicide"!! It ' s in black and white that Swanson perjured himself at trial! Furthermore, Reis's report completely corroborates the KPD's "Detailed Daily Log Report" which clearly states Swanson told Patschke "during the chase that the victim had 3 puncture-stab wounds"!!

In addition, Reis's report clearly proves that Dispatcher Madden knowingly testified falsely at Hudson's 3/13/08 discovery hearing when he said that "Swanson told Patschke the victim had been stabbed-had puncture wounds "after the chase had ended", because Reis clearly heard the radio transmission "during the chase that the victim had been stabbed"!! She intentionally testified falsely to try and cover up "Patschke's false trial testimony that Patschke didn't know the victim had been stabbed until after he had found the knife and had called Rosche to fi n d out i f the victim had been stabbed"!! DA Biskupic never ever had officer "Reis" on any of his witness lists"!! Biskupic never intended to call Reis to testify at trial because he clearly knew that Reis would expose all of the anticipated false testimony by Patschke, Rosche and Swanson!! Biskupic"suppressed Reis's report from Hudson and Hudson's atty.'s prior to trial". Reis's report was not contained in either of Biskupic's July 31 or August 28, 2000 discovery packets which

itemizes the evidence he turned over prior to trial , which he told the Court in his 10/13/00 "Speedy Trial Demand" contained all the evidence in the case!! Hudson's postconviction atty. "Rebholz" did raise the issues at my trial that (a) Biskupic suppressed the KPD's detailed daily log report from the defense prior to trial , which prejudiced Hudson because he was unable to use it at trial to support his defense to the jury that the knife was planted and that Patschke knew during the chase the victim had been stabbed" (See Rebholz's 1/30/09 PCM at page's 27-29), (b) he also raised several issues that the Biskupic suppressed Swanson's radio transmissions from "Exhibit 116-audio tape of the chase" and also failed to disclose a copy of "Ex.116" prior to trial, and also intentionally destroyed the original reel-to-reel dispatch tape, which would have proven Swanson, Patschke, Rosche Etc. testified falsely at trial"! (See page's 29-36 Rebholz's motion")!! However, Rebholz failed to raise the "separate Nape Violations" that the State "knowingly used false testimony to obtain Hudson's convictions"!! Based upon all the above facts and evidence, it's undeniable that Swanson intentionally testified falsely at trial, and that Biskupic elicited false testimony from Swanson and intentionally "failed to correct Swanson's false testimony during cross-examination by Hudson" and trial & postconviction counsel failed to raise these issues!! Under Napue and Brady, the State clearly presented false testimony. They suppressed Officer Reis' report along with the KPD's log because it would not fit their narrative and would be exculpatory for the Defendant.

L. ATTY. REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE THAT OUTAGAMIE COUNTY SHERIFF'S DEPT. "OCSD" OFFICER SGT. MARY SCHUELKE KNOWINGLY TESTIFIED FALSELYAT TRIAL WHEN SHE TESTIFIED THAT STATE'S TRIAL "EXHIBIT116-AUDIO CASSETTE DISPATCH TAPE OF THE POLICE OFFICERS RADIO COMMUNICATIONS DURING THE CHASE OF HUDSON' WAS A "TRUE AND ACCURATE COPY OF THE ORIGINAL AUDIO DISPATCH TAPE THAT SHE HAD PREPARED FOR TRIAL BECAUSE EXHIBIT 116 "IS NOT ATRUE AND ACCURTATE COPY OF THE ORIGINAL AUDIO DISPATCH TAPE" BECAUSE THE RADIO TRANSMISSIONS MADE DURING THE CHASE BY THE OFFICERS THAT

THE "VICTIM HAD BEEN STABBED AND THIS WAS A HOMICIDE WERE DELIBERATELY SUPPRESSED FROM EXHIBIT 116. THE STATE KNOWINGLY USED AND PRESENTED FALSE TESTIMONY AND FAILED TO CORRECT THE FALSE TESTIMONY. ATTY. REBHOLZ WAS INNEFECTIVE FOR FAILING TO RAISE THE ISSUE THAT DA "BISKUPIC" KNOWINGLY ELICITED AND PRESENTED OFFICER SCHUELKE'S FALSE TESTIMONY AND IT WAS A NAPUE VIOLATION. THIS VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

On June 25, 2000, just 5 days after the stabbing incident, Hudson's defense counsel atty ."Brian Figy" sent the Outagamie County Sheriff's dept. Records Custodian(who was officer Schuelke) a n Open Records Request specifically requesting a copy of their "DISPATCH AUDIO TAPED RADIO COMMUNICATIONS AMONG THE POLICE OFFICERS WHO WERE INVOLVED WITH THE INCIDENT ON JUNE 25, 2000" (see exhibit 43). Figy also sent ORR to 7 other law enforcement agencies on June 2 5 ,2000 requesting copies of their dispatch records, dispatch tapes, e t c. (See Exhibits 43,44, 45,46,47, 48, 49, 51) On July5, 2000, atty. Figy provided a copy of his ORR he sent to the Sheriff's Department to DA Biskupic's Special Investigator "Steven Malchow" (See enclosed Figy's "Written Notes" Exhibit 53 and 51).

On July 6, 2000, DA Biskupic contacted "Maureen Flanagan" at the Wis. Dept. of Justice (via e-mail) requesting information on"how he can deny atty. Figy's ORR for a copy of the OCSD's audio dispatch tape of the police officers radio communications." Biskupic advised Flanagan that Fig had sent the OCSD an ORR asking for a copy of "all the police dispatches (radio communications) and that he didn't want these records turned over to the defense just yet"'! Flanagan advised Biskupic that he could advance a crime detection on going investigation

reason to deny the defense access to these records" 'prior to discovery kicks in for the defendant". (See enclosed Biskupic's and Flanagan's 7-6-00 E-mails, Exhibit 52).

Biskupic did not disclose a copy of his and Flanagan's 7-6-00 e-mails to Hudson or his atty.'s ppior to trial! They were finally turned over to Hudson's postconviction counsel "James Rebholz" at the April 17,2008 Postconviction Discovery Motions Hearing. Rebholz also did not raise the "Brady Issue" in Hudson's 1-30-09 Comprehensive PO regarding Biskupic's failure to disclose the exculpatory e-mails between him and Flanagan!

On July 6, 2000, after communicating with Flanagan, Biskupic contacted atty. Figy and advised him that he had received the copy of his ORR he sent to the OCSD (that Figy gave to Malchow) and that he will be forwarding it to the "Outagamie County Corporation Counsel'. (See enclosed Figy's "Written Notes", Exhibit 51, 53). On July 7,2000, Outagamie County Corporation Counsel, Staff Atty. "Kenneth Wagner called atty Figy and advised him that he will be drafting him a letter in response to his ORR to the OCSD and further told him that "there is an ongoing investigation in this case" (See enclosed Figy's Written Notes, exhibit 51).

On July 12, 2000, Atty. Wagner sent a letter in response to his ORR to the OCSD advising Figy that "our concern is that there is an ongoing investigation" regarding this case and some of the requested materials may affect or have a bearing on that investigation and because of this, he is by this letter informing the DA's office that he will be turning over the requested records to Figy unless the DA's office files a Motion for a Protective Order within 7 days, and that while he thesis not required by law, "he (Wagner) feels that the DA may have an interest in protecting these records and he will leave it up for a court to decide whether the records should be turned over" (See enclosed Wagner's 7-7-00 letter to Figy, Exhibit 53).

On July 20, 2000, the Court conducted the Preliminary Hearing. At this hearing, Hudson's defense counsel atty."Eugene Bartman" questioned both Kaukauna Police Dept. Officers Sgt. Robert Patschke and Gerald Rosche regarding their radio communications on the day of the incident and both officers testified that there are in fact records of their radio communications and that they were in fact audio taped! (See Exhibits 33 and 34) Atty Wagner still refused to hand over the transcripts after the preliminary hearing stating that it would up to Mr. Biskupic.

On July 31, 2000, DA Biskupic delivered the State's first pretrial "Itemized Discovery Packet ' to Hudson's atty.'s Figy and Bartman which consisted of '113 pages of materials." However, this discovery packet did not contain a copy of the OCD's "audio dispatch tape of the radio communications among the police officers " that Figy and Bartman had been aggressively seeking disclosure of ' ! (See enclosed Biskupic's 7-31-00 Itemized Discovery Memorandum to Figy and Bartman, Exhibit 52). At the arraignment, DA Biskupic told the court that he had just turned over to atty.'s Figy and Bartman, over 113 pages of discovery and that "he'll be promptly turning over the rest of the discovery in the case to them." Judge Froehlich then ordered Figy and Bartman to file any motions "including suppression" within 20 days, as long as Biskupic turned over the rest of the Discovery. On August 3, 2000, atty. Figy spoke with Outagamie County Sheriff's dept. Officer Captain Johnson about the Sheriff's dept.'s' "audio dispatch tape" that Figy had requested in his ORR and Johnson advised Figy that "DA Biskupic has a copy of the Dispath Tape." After speaking with Johnson, Figy made notes that he must send Officer Schuelke letter requesting her to "save- preserve the original audio dispatch tape. (See enclosed Figy's 8-3-00 "Written Notes", Exhibit53).

On August9, 2000, atty. Figy filed an exhaustive "Discovery Demand and Motion" with DA Biskupic and the trial Court. (See enclosed Figy's 8-9-00 Discovery Demand and Motion, Exhibit 54). OnAugust15,2000, atty. Figy sent officer "Schuelke" a letter specifically requesting her to save-preserve the Original Audio Dispatch Tape for the incident on June 25, 2000" (Atty. Rebholz entered Figy's letter to Schuelke on 8-15-00 into evidence at the April 17, 2008, postconviction discovery motions hearing as "Exhibit18, R.296, Ex.18. On August 28, 2000, DA Biskupic delivered the state's second pretrial "Itemized Discovery Packet" to atty.'s Figy and Bartman which consisted of "327 pages of materials." However, this packet did not contain a copy of the OCSD's "Audio Dispatch Tape of the police officers' radio communications" that Figy and Bartman had been aggressively seeking and demanding disclosure of the tape.(See Exhibit 55)

On September 11, 2000, DA Biskupic sent atty.'s Figy and Bartman a letter telling them that they have been in receipt of all the discovery in the case for several weeks now and he wants a timeframe on when they'll be filing any motions to be heard at the October 13, 2000 Motions hearing (See Exhibit 56) On October 10, 2000, Atty.'s Figy and Bartman filed a "Notice of Motions and Motions in Limine" with Biskupic and the trial Court advising them that they'll be addressing Hudson's (8-9-00) discovery demand and motion (discovery issues) at the October 13, 2000 motions hearing. Figy and Bartman knew that Biskupic had lied to them in his 9-11-00 letter to them by claiming they had been in receipt of all of the discovery in the case for several weeks because Biskupic hadn't turned over the OCSD's "audio dispatch tape" to them in either of his 7-31 or 8-28-00 Itemized Discovery Packets (as well as numerous items of other evidence)! In response, DA Biskupic filed a "Speedy Trial Demand" on October 13, 2000, telling the Court that the "State had turned over all of the discovery in the case to Figy and Bartman in 2 packets

dating 7-31 and 8-28-00" (See Exhibit 58). Biskupic clearly "lied' to the Court in his Sppedy Trial Demand by claiming that the State had turned over all of the discovery in the case to Figy and Bartman in the 2 packets dating 7-31 and 8-28-00 because he clearly knew that he did not turn over a copy of the Audio Dispatch tape to Figy and Bartman in either one of these packets as the tape is clearly not itemized in these packets as being turned over!! At the October 13, 2000, motions hearing, the Court allowed Figy and Bartman to withdraw from the case due an alleged conflict of interest regarding their prior representation of a State witness "Shirley Schultz However, Figy and Bartman never addressed the discovery issues with the Court regarding Biskupic's failure to turn over the OCSD's "audio dispatch tape"and other evidence before the Court allowed them to withdraw. In addition, the Court granted Biskupic's Speedy Trial Demand and ordered Bartman to appoint Hudson new counsel who will be ready to try the case on December 4, 2000. Bartman then appointed atty. Nila Robinson to represent Hudson!

On October 19, 2000, DA Biskupic sent Hudson's new counsel atty. Robinson a letter telling her that the State had turned over all the discovery in the case to Hudson's prior counsel (Figy and Bartman) in 2 packets dating 7-31 and 8-28-00" and that she should obtain that discovery from them in order to be prepared for the December 4 ,2000 trial date. Biskupic clearly lied to Robinson in his 10-19-00 letter by telling her that he had turned over all of the discovery in the case to Figy and Bartman in the 2 packets dating 7-31 and 8-28-00, because he clearly hadn't turned over the OCSD's "audio dispatch tape" (and other evidence as well) to them before they withdrew! After Hudson received a copy of Biskupic's 10-19-00 letter to Robinson, Hudson advised her that Biskupic was lying to her because he hadn't turned over a copy of the audio dispatch tape to Figy and Bartman before they withdrew and Hudson insisted that she obtain a

copy of the tape and to address the issue with the court. She told Hudson she would. However, she never took any action whatsoever to obtain the tape. Hudson then fired her because he failure to obtain this tape (and other evidence) and she was pressuring him to plead guilty. On November 22, 2000, the Court allowed Hudson to discharge atty. Robinson. Atty. Bartman then appointed atty. Edmund Carns to represent Hudson.

Hudson immediately told Carns that Biskupic hadn't turned over a copy of the OCSD's "audio dispatch tape" that Figy and Bartman had been seeking and demanding disclosure of and that he insisted that Carns address the issue with the Court and to obtain the tape (and numerous items of other evidence as well. Carns told Hudson he would. However. Carns never took any action whatsoever to obtain the dispatch tape, so Hudson asked the Court for new counsel. At the February 8, 2001, hearing on Hudson's request for new counsel, Hudson advised the Court that Biskupic was suppressing evidence from him and that Carns is refusing to obtain it. Biskupic told the Court that the State had turned over all of the discovery in the case and that Carns had obtained it all from prior counsel and that Hudson was just acting dilatory and trying to delay the case and he should be forced to represent himself. At the February 19, 2001 hearing, Hudson again told the Court that Biskupic was suppressing evidence and that Carns was still refusing to obtain it. Biskupic again told the Court that the State had turned over all of the discovery and that Hudson was just acting dilatory and trying to delay the trial. The Court then ruled that Hudson was acting dilatory and trying to delay the trial and forced Hudson to represent himself!

On March 5 ,2001, the first day of trial, DA Biskupic filed the State's "Premarked Exhibit List." Contained in this list was "Exhibit 116" which was the "OCSD's audio dispatch tape of the police

officer's radio communications during the chase. (See Exhibit 59) Biskupic still hadn't turned over a copy of the Audio Dispatch Tape to Hudson or any of his prior atty.'s before the start of the trial!! It must be e noted that Biskupic sent atty. Carns (who was acting as Hudson's standby counsel) a copy of his "Premarked Trial Exhibit List' therefore, Carns clearly knew that Biskupic was going to use the audio dispatch tape at trial "Ex.116" and that Biskupic never did turn over a copy of this tape prior to the start of the trial!!

On the2nd day of trial, Biskupic presented testimony from officer "Schuelke". Schuelke was the first officer to testify at trial! Biskupic then elicited testimony from Officer Schuelke that she had prepared a "true and accurate copy of the original audio dispatch tape of the radio communications between officer Patschke and the other officers on the day of the incident. 'Biskupic showed officer Schuelke state's trial original dispatch tape she if Ex.116 was the true and accurate copy of the original dispatch tape she had prepared for trial involving Patschke and the other officers (See enclosed Schuelke's trial testimony, 3-6-01, Exhibit 60).

Immediately after Schuelke testified, Biskupic presented testimony from officer "Patschke."' Patschke described the police chase of Hudson, and how they found the "bloody knife lying on the driver's side floor of Hudson's truck after they pulled him over. Patschke also testified that "after they had found the knife, he had called officer Rosche who was at the scene on Plank Road assisting the victim and asked him to check the victim for any stab-knife wounds and Rosche told him she had at least 4 stab wounds. Patschke then denied on cross-examination by Hudson that Rosche never called him during the chase or before they found the knife and told him that the victim had been stabbed! (See Patschke's 3-6-01 trial test Exhibit 35). After Patschke

described the chase and the finding the knife, Biskupic played"Exhibit116" for the jury!! During the playing of Exhibit 116, Hudson began to register an objection to the Court about the tape and the Court excused the jury. After the jury was excused, Hudson argued to the Court that (1) Biskupic had suppressed and never turned over a copy of Exhibit 116 prior to trial despite the fact that Figy and Bartman had specifically demanded disclosure of this tape; (2) that he believed the tape had been tampered with and that stuff had been suppressed from the tape because the tape contained numerous breaks throughout the tape and that he wanted to have the tape examined by an expert to prove it had been tampered with, etc. However, Judge Froehlich denied Hudson's request telling Hudson that the Court was not going to stop the trial!

Wis. Stat. 971.23(1) covers discovery in criminal cases. It provides that the "Upon demand, the district attorney shall, **within a reasonable time before trial**, disclose to the defendant or his or her attorney and permit the defendant or his or her attorney to inspect and copy or photograph all of the following materials and information, if it is within the possession, custody or control of the state...(emphasis added) A reasonable time before trial is not the morning of trial. Biskupic in his "Discovery Demand and Motion for Pre-trial orders" indicates what he believes is a reasonable time before trial. A reasonable time before trial is "not less than 30 days prior to trial." But Hudson never gets that evidence and much more before trial.

After trial, Hudson advised his postconviction counsel atty. Cook that his atty.'s Figy and Bartman had specifically demanded disclosure of the OCSD's audio dispatch tape prior to trial but that Biskupic deliberately failed to turn it over to them before they withdrew, and that his new atty.'s "Robinson and Carns" refused to obtain the tape, and that Biskupic had entered the

tape into evidence at trial as Exhibit 116, and that when Biskupic played the tape for the jury that the tape contained numerous breaks throughout the tape and that he had made objections and arguments to the Court that he believed the tape was tampered with and wanted to have it examined by an expert to prove it, etc., but the Court denied his request, and that he wanted Cook to have the tape examined by an expert to prove the tape had been altered-tampered with and that exculpatory radio transmissions were suppressed from the tape!

Given this information, Cook immediately went to the trial Court, and he listened to "Exhibit 116" and learned that Hudson was right, that the tape did in fact contain numerous breaks throughout the tape. Cook then immediately filed a motion with the trial court demanding that the State "produce the original audio dispatch tape from which officer Schuelke had prepared Ex.116 from so he could have it examined by an expert to prove the that Ex.116 was not a true and accurate copy of the original tape as Schuelke testified it was and to prove that highly exculpatory radio transmissions were intentionally suppressed from the tape that would have supported Hudson's innocence and that he was framed by the police officers by planting the knife in his truck and testifying falsely at his trial to obtain his convictions! (See Exhibit 61) Cook even advised the Court in this motion that the trial transcript clearly shows that Hudson began to register an objection to the Court during the playing of "Exhibit 116" and that the jury was excused, but that Hudson's arguments to the Court outside the presence of the jury regarding Ex. 116 being tampered with etc., was not included in the transcript. (See Exhibit 61)

On February 14, 2005, AD Schneider turned over a "copy of trial Exhibit 116" to atty Cook and also told Cook that officer Schuelke and Investigator Malchow were working on his request for

the "original audio dispatch tape." (See enclosed Schneider's 2-14-05 Discovery Response to Cook, Exhibit 62). On April20, 2005, atty. Cook sent the copy of State's trial "Exhibit 116" that DA Schneider provided to him on 2-14-05 to "audio/video expert Steve Cain" to be examined for "tampering, breaks, deletions, etc." (See enclosed Cook's 4-20-05 letter to expert Cain exhibit 63). On June6, 2005, expert Cain sent Cook a letter telling him that the tape Exhibit116 had been corrupted and that the tape did in fact contain numerous "breaks/dropouts throughout the tape." (See enclosed Cain's 6-5-05 letter to Cook, Exhibit 64). Atty. Rebholz attached a copy of Cain's June5,2005 letter to atty. Cook to his January 30,2009 Comprehensive PCM for new trial as Exhibit H, in support of his issues he raised that exculpatory radio transmissions had been intentionally suppressed from Exhibit 116, he only raised the "Brady issue."!! Atty Rebholz was ineffective for not ageing a Napue standard. After obtaining expert Cain's forensic testing results on Ex.116, Cook immediately filed a 2nd supplemental demand and motion with the State and trial Court demanding that the State "produce the original audio dispatch tape from which officer Schuelke prepared Ex. 116 from. However, the State, on Schneider refused to respond to Cooks' request for the original audio tapes. Cook them filed another Reply to the Court regarding Schneider's failure to produce the original audio dispatch tape. Cook lays out all of the facts regarding Schneider's failure to produce or respond to his request for the original tape! (Exhibit 65) On October 5, 2005, while Cook's discovery demands and motions were still pending before the Court regarding Schneider's failure to produce the original tape, Cook withdrew from the case because he closed his law practice. Hudson's successor counsel, atty. Chris Gramstrup failed to address the issues with the Court regarding Schneider's failure to produce the original dispatch tape.

Hudson's new counsel, atty. Rebholz filed supplemental discovery demands and motions with the trial Court on remand, again specifically demanding that the State produce the "original audio dispatch tape" (as well as numerous items of other evidence). On April 17, 2008, the trial Court conducted an evidentiary hearing on Rebholz's motions for the State to produce the original audio dispatch tape; and Rebholz subpoenaed officer Schuelke to testify. Schuelke testified that (1) the original reel-to-reel audio dispatch tape from which she had prepared Exhibit 116 from "are not around anymore, " and Rebholz failed to question her on exactly what happened to the original reel-to-reel tape and why they are not around anymore, and (2) Schuelke testified "described' during cross-examination by DA Schneider on how she had prepared "Exhibit 116" from the original reel-to-reel dispatch tape. She testified that she put a cassette tape into the machine and she then played the reel-to-reel tape and recorded everything on the reel-to-reel onto the cassette tape, Ex.116. She also testified that she listened to Ex.116 and compared it to the original to make sure everything was recorded onto Ex.116 from the original tape! (See enclosed Schuelke's 4-17-08 hearing testimony, See Exhibit 66). However, Rebholz completely failed to question officer Schuelke as to why the radio transmissions that were heard by officer Randy Reis from the Hortonville PD which stated during the chase that the "victim was stabbed and this was a homicide" were not contained in Ex. 116! In Addition, KPD Dispatcher Michelle Madden testified on March 13, 2008 discovery hearing that she was listening to the chase and she heard both officers "Rosche and Rex Swanson" had stated during the chase that the "victim had been stabbed". (See Exhibit 36).

After Dispatcher Madden testified at the March 13, 2008 hearing that she had heard officers Rosche and Swanson state during the chase that the "victim had been stabbed and this was a

homicide "Rebholz filed an additional 2nd supplemental discovery demand and motion demanding that the State disclose all of the Kaukauna PD's "dispatch records"! On July 8, 2008, DA Schneider turned over a copy of the Kaukauna PD's "June 2 5 ,2000 Detailed Daily Log Dispatch Report, prepared by dispatcher Madden, and on page 9 of this report it clearly states that Kaukauna PD Officer "Rex Swanson" called Patschke during the chase and told him that the truck he was chasing might be involved with the incident on Plank RD involving the female they were working on and that the "victim had 3 puncture- stab wounds"(See exhibit 12) After Rebholz obtained the KPD's Detailed daily Log Dispatch Report which stated officer Swanson told Patschke during the chase that the "victim had 3 puncture stab wounds, Rebholz compared it to State's trial "Exhibit 116" and sure enough the radio transmissions that Swanson made during the chase that the victim had 3 puncture-stab wounds "were not contained in Exhibit 116!!

Rebholz then filed a motion with the trial Court to have state's trial Exhibit 116 "transcribed" so he could show the Court how the State deliberately suppressed officer Swanson's and Rosche's radio transmissions which stated that the "victim had been stabbed and this was a homicide, and that the victim had 3 puncture-stab wounds from Exhibit 116. The Court granted Rebholz's motion and ordered DA Schneider to have Exhibit 116 transcribed. Schneider filed a copy of the "transcript of Exhibit 116" with the Court on November 22, 2008, R.299. (See enclosed copy of the 'Transcript of Ex.116", Exhibit 67). Officer Randy Reis's June 25, 2000, report clearly states that he was listening to the chase as it was coming towards him and that he clearly heard the radio transmission during the chase as it continued towards him which stated that th "victim was Stabbed and this was a homicide." (See Exhibit 37). However, this transmission that Reis

undeniably heard that the victim was stabbed and thing was a homicide is not contained in the "transcript for Exhibit 116. The radio transmissions that officer Swanson also clearly stated during the chase that the "victim had 3 puncture, stab wounds" (that were clearly heard by dispatcher Madden and is proven by the KPD's 6-25-00 Detailed Daily Log Dispatch Report are also not contained in Ex.116!!

The above facts and evidence undeniably prove that Exhibit 116 is not a true and accurate copy of the original audio dispatch tape and officer Schuelke undeniably perjured herself at trial when she testified that Ex.116 was a true and accurate copy of the original tape that she had prepared for trial. The above facts and evidence also undeniably proves that Biskupic knowingly presented Schuelke's perjured testimony because he clearly knew that Ex.116 was not a true and accurate copy of the original tape because he knew that Swanson's and Rosche's radio transmissions that the victim was stabbed and this was a homicide were deliberately suppressed from ex.116!! Atty Rebholz failed to raise the issues that Schuelke knowingly testified falsely, that Biskupic elicited her perjured testimony and that Biskupic and Schneider intentionally failed to correct Schuelke's perjured testimony despite knowing it was false! Rebholz also failed to adequately raise the issues regarding the State's failure to disclose Exa116 prior to trial, suppressed the radio transmissions from Ex.116, and destroyed and failed to preserve the original tape. He raised them in a "conclusory fashion".

The evidence is clear. The audio tape had been tampered with by either Officer Schuelke or by the individual who had the tape. That was the District Attorney's Office. The same office that failed repeatedly to respond to discovery demands. The same office who did not provide the

Defendant a copy of the tape until after the trial. The same office who lied to the Court about the Defendant asking for an attorney. The same office that knowingly presented false testimony. Biskupic and Schneider knew that the exhibit 116 tape contradicted the KPD logs and Officer Reis' report. They knew of the that Officer Schuelke did not make a complete copy of the tape. The Defendant's expert Mr. Cain shows this.

M. ATTY REBHOLZ WAS INEFFECTIVE FOR NOT RAISING THE ISSUE THAT ATTY. CARNS DID NOT CALL DANITA SCHARENBACH AND LUELLA WILBER TO TESTIFY ABOUT THE FACT THAT HUDSON HAD NEVER TAKEN THE BOAT BEFORE THAT WEEKEND WITH IS TRUCK BECAUSE HIS TRUCK HAD THE WRONG SIZE BALL HITCH UNTIL THAT WEEKEND THUS AFFECTING ROBERT HUSS' TESTIMONY AND VIOLATING HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

On 6/30/00, Huss gave a written statement to the officer's "Manion & Shepardson"of the Kaukauna PD (KPD). In this statement, Huss said that on "two separate occasions in June, he seen this truck, boat and individual involved in the recent murder investigation, and he assumed he (Hudson) was by the river fishing, but never seen him with a fishing pole"! (See exhibit 25) On June 23, 2000, Hudson went to Danita's mom's (Luella Wilber's- who is now deceased) to pick up "her boat &trailer" to take with Danita, Hudson, kids Etc. up north to the land that weekend to use for fishing, and when Hudson tried to put hook up her trailer on my truck "ball hitch" it wouldn't fit because my ball hitch was "too big", so Hudson went to the auto parts store and bought a new one that would fit! When the police arrested me on 6/25/00, they removed this receipt from my shorts pockets and logged it into evidence! Danita was also a witness to this because she was at her mom's house that day when I went to pick up the boat, and she saw that I had to go buy a new ball hitch!! Danita is willing to testify. DNA Expert "John Ertl" at the state

crime lab found Hudson's "old ball hitch in the bed of my truck when he examined Hudson's truck on June 29, 2000!! (See enclosed Erti's inventory case notes for Hudson's truck bed. He placed the ball hitch he found in bag #1)!!

N. NEWLY DISCOVERED EVIDENCE ESTABLISHES THAT DAVID CARNOT KNOWINGLY TESTIFIED FASELY AT THE PRELIMINARY HEARING AND AT TRIAL REGARDING HUDSON HITTING HIM WITH HIS TRUCK AND CAUSING THE INJURY TO HIS LEFT LEG & KNEE WHICH NEEDED STICHES, AND REGARDING OTHER INJURIES TO HIS BODY CAUSED BY HUDSON'S TRUCK IN VIOLATION OF HUDSONS' FUNDAMENTAL CONSTITUTIONAL RIGHT TO A FAIR TRIAL AND DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I , SECTION 8 OF THE WISCONSIN CONSTITUTION.

In his written statement, David Carnot stated that Hudson struck Carnot with Hudson's truck causing injury to his left leg and knee. This resulted in stiches to his leg and a big bruise to his hip. He said that Hudson's truck hit him in the hip and ankle. (See Carnot's statement EX. 84) At the 7-20-00, preliminary hearing, Carnot testified during direct examination that Hudson hit him with his truck causing injuries including his leg/knee which required stiches. On cross examination, Carnot was asked if he cut his leg/knee while going over the fence. Carnot responded that "T don't have any idea."At trial, Carnot testified that Hudson hit him with his truck and caused the injury to his leg/knee that required stiches. (EX. 81) Biskupic argued in his closing argument that Hudson striking Carnot with his truck and causing the leg/knee injury was attempted first degree intentional homicide. (Ex. 83)

On May 5, 2017, Journalist Dee Hall interviewed David Carnot. (See Ex. 82) On page 2 of the transcript, Carnot indicates that he heard a woman screaming and that ran through the woods and slipped on the gravel road. Carnot then saw Van Dyne Hoven laying on the road next to Hudson's truck. Carnot had never told the police this. He never testified to this at the preliminary hearing or at trial. Further in the interview, Carnot was asked if he hurt his knee when he fell on the road. Carnot indicated no that the injury was cause by a piece of barbed wire that they had to dig out of this leg. (Page 7 of the transcript)

Carnot's medical records were never provided to Hudson prior to trial. In March of 2006, Carnot's medical records were produced by the State. (See Ex. 80) Those records show that Carnot was not injured by Hudson's truck. It shows that Carnot was injured by going over the fence. Carnot also told Dee Hall that it was only 15 seconds between hearing the screaming of the woman and Carnot seeing the victim and Hudson. This directly contradicts Carnot's preliminary hearing testimony when he said that the time period was "minutes, matter of minutes."

Carnot clearly lied at trial and at the preliminary hearing. He lied about how he obtained the injury to his leg. He injured it climbing over the fence and not by getting hit by Hudson's truck. His hip injury was from falling on his a** on the gravel road. Carnot had to lie because the truth would not support a conviction for attempted first degree intentional homicide.

Perjury erodes the integrity of the entire judicial system. State v. Canon, 2001 WI 11. *State v. Canon*, 241 Wis. 2d 164, 172 (Wis. 2001) ("Echoing the United States Supreme Court, we previously have declared:

"[i]t is fundamental to the American system of jurisprudence that a witness testify truthfully. Without truthful testimony, it is nigh onto impossible to achieve the primary goal of our judicial system, justice. It is because the search for the truth is central to our legal proceedings that we require each witness to take an oath of truthfulness prior to testifying."

O. ATTY REBHOLZ WAS INEFFECTIVE BY NOT DEVELOPING AND NOT SUPPORTING THE ISSUES THAT 1) HUDSON WAS DENIED HIS CONSTTUTIONAL RIGHT TO A FAIR TRIAL AND DUE PROCESS WHEN THE STATE COMMITTED MISCONDUCT WHEN IT FAILED TO PROVIDE A COPY OF CRIME LAB ANALYST JOHN ERTL'S DIAGRAM OF THE INSIDE OF HUDSON'S TRUCK, AND THAT CARNS WAS INEFFECTIVE FOR FAILING TO OBTAIN A COPY. CARNS SHOULD HAVE PRESENTED EVIDENCE THAT ERTL AND OFFICER MOMBERG DIDN'T FIND BLOOD ON HUDSON' TRUCK'S STEERING WHEEL, GEAR SHIFT, DRIVER'S SIDE DOOR, GAS AND BRAKE PEDALS, DRIVER'S SIDE DOOR HANDLES, ETC.

State witnesses "Amy and Matthew Brittnacher" both seen Hudson driving his truck as he was leaving the scene and they honked their horn to advise Hudson that his boat was off the trailer and was dragging on the ground, and then Hudson pulled over and "tried lifting and pulling and cranking the boat back onto his trailer but he couldn't get it back on, so he just unhooked it and drovea way"! (See enclosed Brittnacher's June 25, 2000 written statements, EX. 85). On the 2nd day of trial, Biskupic presents testimony from both Amy & Matt Brittacher and they both testified about seeing Hudson "trying to lift and crank his boat back onto the trailer"! (See enclosed Brittnacher's 3/6/01 trial testimony, EX. 86).

Wisconsin State Patrol Officer Tim Austin prepared a report stating that Hudson's boat was found lying on the roadway "1127 feet away from where the victim was found'! Austin then states in his report that approx "1297 feet away from Hudson's boat that was found on the roadway ", that a " bloody cloth was found lying on the roadway which police claim Hudson threw out of his truck"! (See enclosed officer Austin's report, Ex. 87). Also see enclosed State's "Exhibit 34"a photograph of the "bloody rag "Hudson allegedly threw of his truck window as he was fleeing from the scene! (Ex. 88)

After Hudson was arrested, the police took him to St. Elizabeth's Hospital in Appleton, WI. to have him medically cleared and to execute a search warrant on his body. Dr. "Frederick W. Knoch" examined Hudson, and he stated on the diagram of Hudson's body in his report that "he

observed blood on both palms of Hudson's hands" and his "lower left leg" and "chest area". (See Ex. 89). Dr. Knoch never states that "he saw any blood on Hudson's arms"!! Also, if you look at the photos of Hudson in the back of the squad car, "you don't see any blood on his arms whatsoever"!!(ex.11)

on June 27, 2000, Hudson's truck was taken to the Wis. State Crime Lab to be processed for evidence. State Crime Lab DNA Expert "John Ertl ' processed Hudson's truck for blood evidence, and he prepared a report of "all the areas he found blood in and on Hudson's truck"! (See enclosed Ertl's 6/28/00 2 page report Ex. 92). This report was entered into evidence at trial by the state as "Exhibit 93". Ertl doesn't list in his report that "he found any blood at all on (a) the driver's side floor where the police claimed to have found the blood knife, b) the gear shifter, (c) the steering wheel, (D) the driver's side door handle (inside or outside handle), or (E) the driver's side seat"!! (Ex. 92). Kaukauna PD Evidence Technician officer "Robert Momberg" states in his report that"he examined Hudson's boat and trailer for evidence on July 5, 2000 (with KPD officer Sgt. Van Drunen) and he lists the evidence that he found"! Momberg doesn't state in his report that "he found any blood whatsoever on Hudson's boat & trailer when he examined it"!

On the lst day of trial, DA Biskupic entered "3 photographs of the bloody rag laying on the roadway. " Exhibits 32-34" Biskupic never had the bloody rag tested for DNA prior to trial, and Biskupic never used or entered the actual bloody rag into evidence at trial!

A Biskupic told the jury in his "opening argument" that they'11 hear evidence that Hudson's boat came off his truck trailer as he was fleeing the scene and that they'll hear testimony from the "Brittacher's" that they observed Hudson "trying to lift the boat back onto the trailer", and that after Hudson leaves the boat on the ground, he gets back into his truck and drives away and as he's driving away he "makes a conscious effort some calculated decisions in his mind to start disposing of some of the evidence, and in fact , Hudson has the blood on him" and he makes some efforts with a rag to wipe off the torso of his body, the trunk of his body, his arms, his hands, with a white rag that was in his truck, and after he's done wiping it off his body, he throws the bloody rag out of his truck"! (See enclosed page's 174-176, Biskupic's opening argument, Ex. 90).

On the 2nd day of trial, Biskupic presents testimony from both Amy & Matt Brittnacher and they both testified about seeing Hudson "trying to lift and crank his boat back onto the trailer"! (See enclosed Brittnacher's 3/6/01 trial testimony, Ex. 86). After the Brittnacher's testified, Biskupic had all the Officers testify about "all the blood on Hudson's body, bloody hands, arms, legs, feet, chest, stomach" and about the rag found on the road that Hudson allegedly threw from his truck"! On the 3rd day of trial, DA Schneider presents testimony from DNA Expert "John Erti". Ert1 testified about where he found blood on Hudson's truck, but Schneider nor Hudson ever question him about whether or not if he found any blood on Hudson's "truck steering wheel, gear shifter, driver's side door handle, driver's side floor, or driver's side seat"!. (See ErtI's 3/7/01 trial testimony Ex.) On the 2nd day of trial, Biskupic presented testimony from officer Robert Momberg. However, Biskupic never questioned Momberg about his "examination of Hudson's boat & trailer, and whether or not he ever found any blood on them" despite the fact that

Momberg stated in his report he examined them for evidence, nor did Hudson question him regarding whether or not he found any blood on the boat & trailer!

Biskupic again told the jury in his "closing argument" that Hudson's boat came off the trailer as he was fleeing from the scene, and he stopped and "tried cranking and lifting the boat back onto the trailer and the Brittacher's see him do this", and as Hudson drove away from scene of his boat, he "used the white rag to wipe off the victim's blood from his body and then threw it out of the window to conceal the crime"!! (See enclosed Biskupic's 3/9/01 closing argument, page's 123-124, Ex. 91). When the prosecutor goes beyond reasoning from the evidence to a conclusion of guilt and instead suggests that the jury arrive at a verdict by considering factors other than the evidence, the statements are impermissible. Improper comments do not necessarily give rise to a due process violation. For a due process violation, the court must ask whether the statements so infected the trial with unfairness as to make the resulting conviction a denial of due process. State v. Jorgensen, 2008 WI 60, 310 Wis. 2d 138, 754 N.W.2d 77. After trial, Hudson's atty. "David Cook" went to the crime Lab and met with DNA expert "John Ertl" and he reviewed ErtI's entire file, and in Ertl's file, Cook saw a "diagram of Hudson's truck that Ertl prepared depicting exactly where he found blood in & on Hudson's truck"! Ertl's diagram "doesn't depict any blood on (a) the driver's side floor, (b) the steering wheel, (c) gear shifter, (d) driver's side seat, and (e) driver's side door handle.

At the May27, 2003 DNA hearing, Cook presented testimony from " John Ertl " . Cook asked Ertl if he examined Hudson's truck for "biological-blood evidence". Ertl said yes. Cook then showed him his 6/28/00 2-page report (state's trial Ex.93 enclosed) and asked him to identify the document. Ertl said it was his evidence receipt form for the "items of evidence he collected from Hudson's truck"! Cook then asked him "how thoroughly did he search through Hudson's truck for blood"! Ertl said: thorough as he can"! Cook asked him as he looked through the truck for blood, did he make note of where he found blood. Ertl said yes, that he "prepared a diagram of Hudson's truck and depicted on the diagram exactly where he found blood"! Cook then showed him "Exhibit 6" and asked him to identify it. Erti said that "Ex.6" was the "5 page diagram" he prepared of Hudson's truck depicting where he found blood! Cook then asked him if "he found any blood whatsoever on the driver's side floor, steering wheel, gear shifter, the gas or brake pedals, driver's side seat, or the driver's side door handle", and Erti said "no, he didn't find any blood at all on those areas of the truck"! (See enclosed page's 78-84, E r t l ' s 5/27/03 hearing testimony, R.171, EX. 94). Ertl's "5 page diagram" he prepared depicting where he found blood in Hudson's truck! **This diagram was "never turned over to the defense prior to trial!!**

Dr. Knoch report is crucial. It states that Hudson had blood on his hands, but not on his arms. If Hudson had committed the homicide and had the Victim's blood on his hands, then blood would have had to be transferred to the boat and the trailer. But there was none found!! He would have had to put his truck in gear and drive away, so blood would have to be on the gear shift and the steering wheel. But there was none!! If he got in the truck with bloody hands, there would be blood on the driver's door handle, the driver's seat. If the bloody knife was thrown down on the driver's side as the State represented, then the victim's DNA would be present. John Ertl's and Officer Momberg's examination confirms that no DNA was present. This is more consistent than

what the State was arguing. The State engaged in misconduct by not turning over Ertl's report. This report is exculpatory and supports the Defendant's claim that the blood was thrown on him while he was in the squad car. The State suppressed the report. Atty. Rebholz was ineffective for not supporting the claim and showing the actions of the State.

Biskupic knowingly made false statements in his opening and closing argument. He knew that Ertl's report contradicted the State's theory of the case. He just didn't turn it over to the Defendant. He knowingly presented false testimony from the Officers that Hudson was covered in blood on his arms and chest when the photos and Dr. Knock's report showed otherwise.

Atty. Rebholz was ineffective for not making a Napue argument. But further Rebholz didn't address the fact that Biskupic did not provide the exculpatory report of Ertl to Hudson. There was no blood spatter on the roadway!!

In United States v. Bagley, 473 U.S. 667, 675 (1985), the Court summarized the goal of the Brady rule:
Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur. Thus, the prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial.

Evidence that is favorable to the accused encompasses both exculpatory and impeachment evidence. Strickler .v Greene, 527 U.S. 263, 280 (1999); Giglio v. United States, 405 U.S. 150 (1972). In Giglo, the court concluded that "when the reliability of a given witness may well be determinative of guilt or innocence, 'nondisclosure of evidence affecting credibility falls within this [Brady rule." Gizlio, 405 U.S. at 154 (citing Napue .v Illinois, 360 U.S. 264, 269 (1959)). In United States v. Bagley, 473 U.S. 667 (1985), the Court again emphasized the duty of the prosecutor to disclose impeachment evidence under Brady.

A prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. Kyles .v Whitley, 514 U.S. 419, 437 (1995). In Kyles, the State had argued that some of the evidence at issue in that case was not subject to disclosure under Brady because it was not disclosed even to the prosecutor until after the trial. Dismissing this argument, the Court stated:

[The State] pleads that some of the favorable evidence in issue here was not disclosed even to the prosecutor until after trial, . . . and it suggested below that it should not be held accountable under Bagley and Brady for evidence known only to police investigators, and not to the prosecutor. To accommodate the state in this manner would, however, amount to a serious change of course from the Brady line of cases. In the State's favor it may be said that no one doubts that police investigators sometimes fail to inform a prosecutor of all they know. But neither is there any serious doubt that 'procedures and regulations can be established to carry [the prosecutor's] burden and to insure communication of all relevant information on each case to every lawyer who deals with it.' [citation omitted]. Since, then the prosecutor has the means to discharge the government's Brady responsibility if he will, any argument for excusing a

prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials. 115 S.Ct. at 1568.

The rule in Kyles was foreshadowed by the Court in Pennsylvania v. Ritchie, 480 U.S. 39 (1987). In Ritchie, a sexual abuse case, the defendant sought pretrial disclosure of records of the Child Protective Services Agency involved in investigating the abuse allegation. The court, citing Brady, Agurs, and Bagley, implicitly found that these social service records fell within the Brady rule and concluded that government has an obligation to disclose to the defense any evidence in such records that is favorable and material. Id. at 57.

Wisconsin courts have similarly concluded that an individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's including the police. State v. DeLao, 2002 WI 49, 252 Wis. 2d 289, 302, 643 N.W.2d 480; State v. Sturgeon, 231 Wis.2d 487, 499, 605 N.W.2d 589 (Ct.App. 1999); State v. Maass, 178 Wis.2d 63, 69, 502 N.W.2d 913 (Ct.App. 1993); State v. Martinez,

In Martinez, which involved the loss of a tape recording by a county jail, the court stated:
We also reject the trial court's reasoning that the actions of the police authorities in losing the tape should not be visited upon the state as the prosecuting entity. For purposes of the criminal discovery statutes, we view an investigative police agency which holds relevant evidence as an arm of the prosecution. In most criminal cases, the evidence against the accused is garnered, stored and controlled by the investigating police agency. Depending upon local practice, many courts and district attorneys entrust the custody and control of such material to the police even after it has been elevated to formal evidentiary status in a criminal proceeding.
Martinez, 16 Wis. 2d at 260

P. THE STATE VIOLATED HUDSON'S RIGHT TO DUE PROCESS UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION AND UNDER ARTICLE 1 SECTION 8 OF THE WISCONSIN CONSTITUTION BY NOT HAVING THE RAG FOUND AT THE SCENE TESTED WHILE CLAIMING THAT IT HAD THE VICTIM'S BLOOD ON IT

As presented above the State, made false, unsubstantiated claims that the Defendant used a rag and wiped the victim's blood off himself and tossed it from his truck while he fled the scene. This rag should have the Defendant's DNA and the victim's DNA on it. However, the State never sent the rag to the State Crime Lab to be tested before trial. A defendant's due process rights are violated if the police: (1) failed to preserve evidence that is apparently exculpatory; or (2) acted in bad faith by failing to preserve evidence which is potentially exculpatory." *Luedtke*, 362 Wis.2d 1, ¶ 40; (citing *Greenwold II*, 189 Wis. 2d at 67–68 (citing *Arizona v. Youngblood*, 488 U.S. 51, 57–58 (1988))); *see also Greenwold I*, 181 Wis. 2d at 885–86.Evidence is deemed apparently exculpatory when "the evidence destroyed 'possess[ed] an exculpatory value that was apparent to those who had custody of the evidence ... before the evidence was destroyed,' and the evidence is 'of such a nature that the defendant [is] unable to obtain comparable evidence by other reasonably available means.'" *State v. Munford*, 2010 WI App 168, ¶ 21, 330 Wis. 2d 575, 584–85, 794 N.W.2d 264.

Evidence lacks apparent exculpatory value when ... analysis of that evidence would have offered 'simply an avenue of investigation that might have led in any number of directions.'" *Hubanks v. Franks*, 392 F.3d 926, 931 (7th Cir. 2004) (citing *Arizona v. Youngblood*, 488 U.S. 51, 57 n.* (1988)).Bad faith is shown if "(1) the officers were aware of the potentially exculpatory value or usefulness of the evidence they failed to preserve; and (2) the officers acted with official animus or made a conscious effort to suppress exculpatory evidence." *Luedtke*, 362 Wis. 2d 1, ¶55 (citing *Greenwold II*, 189 Wis. 2d at 69). That said, where the lost or destroyed evidence is not merely potentially exculpatory, but actually or apparently exculpatory, no showing of bad faith is required to prove a due process violation. *State v. Huggett*, 2010 WI App 69, ¶11, 324 Wis. 2d 786, 783 N.W.2d 675.

Q. DNA EXPERT JOHN ERTL INTENTIONALLY TESTIFIED FALSELY AT HUDSONS' MAY 27, 2003, AND OCTOBER 5, 2005, DNA HEARINGS WHEN HE TESTIFIED THAT HE CONDUCTED A SECOND TEST "HEMATRACE" ON THE SWAB FROM HUDSONS' "LEFT LEG, ITEM TI"AND THAT TI "CONFIRMED THAT IT WAS HUMAN BLOOD" ON THIS SAMPLE", WHICH IS COMPLETELY FALSE BECAUSE (1) THE RECORD CLEARLY SHOWS THAT ERTL NEVER DID CONDUCT A "HEMATRACE TEST ON THE LEFT LEG SAMPLE", AND (2) ERTL HAD PREVIOUSLY TESTIFIED AT TRIAL (BEFORE THE 1/23/03, & 10/5/05, HEARINGS) THAT THE "SAMPLE FROM THE LEFT LEG TURNED OUT TO BE NOT HUMAN BLOOD"!!

R. THERE IS EVIDENCE SHOWING THAT DISTRICT ATTORNEY "CARRIE SCHNEIDER" INTENTIONALLY HAD ERIL TESTIFY FALSELY AT HUDSONS' JANUARY 27, 2003, DNA HEARING BY HAVING HIM TESTIFY THAT "HE DID CONDUCT THE SECOND HEMATRACE TEST ON THE LEFT LEG SAMPLE AND THAT IT CONFIRMED THAT IT WAS "HUMAN BLOOD", SO THAT THE TRIAL COURT WOULD DENY HUDSONS' ATORNEY "DAVID COOK'S" MOTION FOR DNA TESTING!

FACTS SUPPORTING CLAIMS Q. AND R.

First, Ertl clearly states in his August 2, 2000, (pretrial) DNA report that he only tested 2 of the samples from Hudson's body "Items T1-two swabs from left leg, and T2-two swabs from right hand". Second, Ertl clearly states in his report that "each of these 2 samples (T1 & T2) tested positive in a chemical test indicating the presence of blood" Ertl further states that "human DNA was **not** recovered from the left leg sample". (Please see enclosed Ertl ' s August 2, 2000, Report, Ex. 92). Ertl " never "states in his August2, 2000 ,reportthat " he conducted a a (HEMATRACE)Test on the left leg sample (or any samples for that matter) and that "it confirmed that it was human blood on the left leg"! He clearly only states that the left leg sample "tested positive for the presence of blood"!!

At trial , during direct questioning by "DA Schneider", Ertl clearly testifed that "he only conducted a **PHENOLPTHALEIN TEST** ON ALL OF THE samples he tested for blood. He testified that this test "just indicates that the sample is just possibly blood, just like the color, and if it continues to say, I MIGHT BE BLOOD, then he'11 go ahead and he'll extract the DNA from it, and that the DNA testing itself will determine human origin". (Please see March 7, 2001, trial transcript at page's 190-191, EX. 93). Ertl "never" testified at trial that "he conducted (hematrace) test on (any) of the samples he tested for blood, including the samples from Hudson's body"!! DA Schneider never questioned Ertl about his test results from the "LEFT LEG SAMPLE at triall!

Now, during cross examination, Hudson questioned Ertl about his test results from the "left leg sample". First, Ertl testified that the police submitted "item T to him, a swab from left leg, left chest, right foot, left arm and right hand". Hudson then asked EtrI "and you didn't find any DNA--human DNA on the left foot, did you? Ertl then said, "I tested for the presence of blood on all of those and they were (all positive) and I chose to extrace DNA from, and I picked the one from your Left foot) because it looked very bright and it looked like there was a lot of blood there, and "that turned out to be not human blood"! (Please see March 7, 2001, trial transcript at page201, Ex. 93). Ertl clearly testified during cross examination by Hudson, that he "only tested for the presence of blood on the samples from Hudson's body and that they were all positive, he never said that he conducted the hematrace test on any of the samples from Hudson's body"!! "or that he confirmed human blood" on these samples!!! In the transcript, right after ErtI said that "that turned out to be not human blood", it has Hudson stating "oh, okay"! However, Hudson never said that. He said to Ertl, "what did you mean it is not human blood, is i t blood"? Whereupon Ertl s t a t e d i t was "animal blood" and then Hudson asked "what kind of animal blood was it" to which Ertl answered that he did not know and then when asked if he tested to see what kind of animal blood it was, Ertl said no, because they already knew that it was animal blood and that the DA didn't want it tested, and then Hudson asked the Court to have the crime lab test it to see what kind of animal blood it was, which the Court denied, which was all intentionally omitted from the transcript.

Now, after trial, Hudson's atty. "Cook" filed DNA motions to have the samples from Hudson's body including the left leg) to prove it is animal blood "and what kind on the left leg because Ertl testified at trial this sample turned out to be not human blood"!. Now, on May 27, 2003, the trial Court conducted a hearing on Cook's motions for DNA testing. Atty. Cook called "Ertl" to testify at this hearing and Cook questioned Ertl about his test results on the "left leg" sample. Ertl then testified that he "first conducted a test on the left leg sample to determine if it was blood and that it tested positive for the presence of blood", and that he then "conducted a second test (hematrace) which is a confirmatory test for human blood, on the left leg sample and that it confirmed that it was human blood"! (Please see enclosed May 27, 2003, DNA hearing transcript page's I, 93-96, Ex. 94).

Hudson found a "fax from DA Schneider to expert Ertl just 4 days before the 5/27/03, hearing" and in this fax, Schneider sent Ertl a copy of the trial transcripts of Hudson's cross examination of him, and on "page 201" of Ertl's testimony, where Ertl states that "that turned out to be not human blood", there is a "circle on the blood and above it , it says DNA could not be detected. (See ex. 101) This clearly shows that DA Schneider had Ertl change his trial testimony that "it

turned out to be not human blood on the left leg", to "that turned out to be not human (DNA) could not detect" which is exactly what Ertl then testified to at the 5/27/03, hearing! (See page 93 (enclosed) 5/27/03, t r . Ex. 94) . It must be extremely noted, that Cook obtained Schneider's 5/23/03, fax to Ertl, when he obtained an entire copy of the state crime labs file in 2004!!

Now, atty. Cook appealed to the Court of Appeals of Froehlich's decision denying DNA testing and the Court overturned Froehlich and ordered DNA testing. Cook then had all of the samples from Hudson's body tested to prove they were animal blood and what kind. However, Dr. Kornfield "didn't find any DNA at all in most of the samples and only found Hudson's DNA in 3 of the samples from Hudson's left leg, Items T1-a, Tlb-2, and U1, "which matched Hudson's DNA from his liquid blood standard, Item Q1b. (Please see enclosed atty. Cook's July 12, 2005, letter to Hudson confirming this, Ex. 108).

Now, after Cook obtained the DNA testing results from Dr. Kornfield, he argued to the Court that the samples were tampered with chemicals so they samples couldn't be determined to be animal blood and what kind". Judge Froehlich then scheduled a hearing on October 5, 2005, on the DNA results and Cook's claims they were tampered with. Ertl again testified that "he conducted the hematrace test on the left leg sample (and now 2 other samples, Item I2, right hand, and Item T4, right foot" and it "confirmed human blood no these 3samples". (Ex.102) After Cook with drew from the case, Hudson's successor counsel atty. "Chris Gramstrup" asked DA Schneider to have the WSCL to "turn over a complete copy of Ertl's DNA filed to him" which Schneider did. Now enclosed in Ertl's file were a 1page "serology/DNA Case Notes prepared by Ertl". Now, all of a sudden, Ertl states in these notes that "he conducted a hematrace test on the "Left leg sample Item T1, the right hand sample Item T2, and the right foot sample Item T4". Furthermore, it must be extremely noted that at the top of the page, I t first states "7/3/00, he examined the items from the "left foot, left chest, right foot, left arm, and right hand, and they tested positive using the "PHTA" (phenolpthalein) test. However, just below that "he then writes in there that he examined these samples (left leg, right foot and right hand" using the hematarce test and they tested positive!. (Ex. 117) Ertl clearly created these false case notes to state he did conduct the hematrace test on the 3 above mentioned samples after Cook withdrew from the case to try and cover up the fact that he testified falsely at the 5/27/03 & 10/5/05, hearings!! Ertl ' s serology DNA case notes were never turned over to Hudson or his atty.'s prior to trial!! That's because they didn't exist at that time!

Ertl never stated in his 8/2/00, report that he conducted a hematrace test on any of the samples, and furthermore, Ertl's 8/2/00, report clearly only state that "he only examined 2 samples from Hudson's body, the left foot and right hand Items TI &T2. However, now he states in these false case notes that he also examined the swabs from the "right foot, (confirmed this samples was human blood" and the l e f t chest and l e f t arm"!! He clearly made up and falsified these case notes!! the most critical part which clearly shows that Ertl intentionally tested falsely at the postconviction hearings and that DA Schneider had him do it, and which also shows that Ertl did in fact testify that it was "animal blood on the left leg" and that it was intentionally deleted from the trial transcripts!!!

On the last day of Hudson's trial, Hudson told the Court that he was going to testify. Judge

Froehlich told Hudson that he could only testify to the facts. Hudson told Froehlich that he was going to testify to the jury that "Ertl testified that he was animal blood on his left leg, that Ertl did testify that it was animal blood". Froehlich said okay, that's part of your defense! DA "Biskupic or Schneider" never, ever objected to the Judge that "Ertl never testified it was "animal blood" on Hudson's left leg, when Hudson told the Court that that's what he was going to tell the jury!! Hudson then testified and specifically told the jury that "expert Ertl testified that "it was animal blood, not human blood, but animal blood on his left leg"!! (Please see 3/9/01, trial transcript at page's 43-44).

If Ertl didn't-never testified that it was animal blood on the left leg like Hudson told the Court Ertl did and he was going to tell the jury that, and then did tell the jury that, "DA Biskupic & Schneider" wouldn't have been jumping out of their seats telling the Court &jury that Ertl never said that!! That alone right there clearly shows that Ertl did testify that it was "animal blood" on the left leg, and that it was intentionally taken out of the trial transcripts, and then DA Schneider then had Ertl change his testimony after trial and had him testify falsely that he conducted the hematrace test and confirmed that it was human blood on the left leg, Etc. It must be extremely noted, that at Hudson's March 7, 2008, hearing, Hudson's atty. "James Rebholz" told the Court that Ertl had testified at trial that it was "animal blood" on Hudson's left leg. DA Schneider immediately objected and told the Court that "she has to correct the record, that Ertl never said the word animal blood"!! (please see enclosed March 7, 2008, hearing tr. page's1,10, Ex. 98).

Molecular Forensics Laboratory (MFL) is a lab which specializes in detecting certain animal DNA. 41 It tested five derivative samples of T I (TIa; TIb-1; TIb-2; TIc-1; and TIc-2); as well as T2a; T3a; TSa; and U1. The lab was unable to extract any DNA whatsoever from TIb-1; TIc-1; TIc-2; T2a; T3a; and TSa. (Appendix: 45; 247:18). Is Of note, MFL was unable to extract any DNA from T2, the only sample Ertl claims contained DNA matching the victim. (Ex. 105) Sample T4 was tested by an entirely different lab, Reliagene Technologies, Inc. This likewise produced "no results due to insufficient or excessively degraded DNA."(ex. 106). T a was also tested at Orchid Cellmark Laboratories. It yielded no result. (Ex. 112).

Regardless of whether Ertl's T2 result is correct, the question remains as to why all the other T samples lacked any DNA whatsoever, 71 Ertl was again asked to explain this result at a subsequent hearing. Apart from the sample not being human blood, he listed three possible causes: bacterial, environmental (ultraviolet), or chemical. (ex. 98,102). Given how fresh the samples were, he agreed that neither bacterial nor environmental degradation was likely. (Id). On the other hand, chemical degradation could have occurred quickly. (Id.) According to Ertl, the absence of DNA was "weird." Usually, if something affects the DNA itself, it will also affect the appearance of the blood. Even then, he's been able to extract DNA from blood stains that were black or green or even had mold growing on them. (Id). He did not know, however, whether a "chemical attack" would have any effect on the sample's appearance. (Id). In sum, four independent labs were unable to extract human DNA from any of the "T" blood samples that were tested. The WCL was unable to extract DNA from TI. WCL was only able to extract human DNA from T2, a result MFL was unable to reproduce.

Hudson sought further testing to determine first, whether the substance taken from his body was in fact blood; second, whether the sample was human blood; and third, whether it contained any

trace elements inconsistent with human blood. A TI sample was tested by Dr. Christopher Palenik at Micro-Trace in Chicago. Based on three different tests, he concluded the sample was blood. A specific testi8 for human blood, however, was negative.19 A sample of TI was sent to an outside lab for DNA testing in an attempt to speciate the blood. As before, the lab was unable to extract any DNA for testing. The possible reasons generally include: "(a) the sampleis not mammalian in origin, (b) DNA that might be present is obscured by an inhibitor, or (c) the DNA is too degraded for analysis." (Report, p. 3). Dr. Palenik also tested TI for trace organic compounds. Elemental analysis showed a low concentration of fine, iron-rich particles of unknown origin. He also found "several unexplained compounds at trace levels (fn omitted): pyridine, a guanidine compound, and a benzoate." As for the benzoate and the guanidine compound, Dr. Palenik noted:

'This benzoate is most consistent withdipropylene glycol dibenzoate, which is most often used as a plasticizer alternative to phthalates. Therefore, it is possible that this compound originated from some type of plastic container (such as a prior storage tube (fn omitted]). The mass spectrum of the indicated guanidine component is not particularly diagnostic as it is consistent with both guanidine and with guanidine thiocyanate (and possibly other compounds). Guanidine thiocyanate is used in some RNA and DNA extraction processes andi s a protein denaturant. [fn omitted] Guanidine thiocyanate was not used by the DNA laboratory used by Microtrace. '

The presence of both the iron-rich particles and the guanidine compound "could have acted as inhibitors to the process of sequencing DNA." In sum, the sample is blood. There is, however, a good probability the blood isnot human (and possibly not of mammalian origin). This would explain why four separate laboratories were unable to extract human DNA from fresh blood samples which, under normal circumstances, would have been ideal for DNA testing. The presence of a benzoate also suggests the sample may have come from a plastic storage tube, such as those used to store blood from an autopsy. The presence of a guanidine component suggests the sample could have been contaminated with guanidine thiocyanate, an inhibitory substance, known to prevent DNA analysis. While these compounds were found at trace levels, Dr. Palenik noted that the "concentration and range of detectable compounds could have changed over time."

There were two blood samples from Hudson that werepositive for the victim's DNA. The first was the blood from Hudson's right hand (T2). This result came from the Wisconsin Crime Lab in its original testing. (Ex.96). The second was the blood from Hudson's sandal. This result came from post-conviction testing by a private lab (Reliagene). (Ex.106). Neither of these results are particularly inculpatory as either could have resulted from the inadvertent and innocent touching of known blood sources. The presence of blood on Hudson's right hand could have easily come from touching the blood stains the victim left on the passenger side of the seat. The more interesting question is why these samples produced DNA while the other samples taken from Hudson's body did not. If they all came from the same source, at the same time, and were collected in the same way, at the same time, they should have all yielded DNA. The most likely explanation for why they did not is because they did not all come from the same source. The victim's blood on Hudson's sandal and right hand can be explained by the inadvertent touching of known victim blood sources. The remaining samples taken from Hudson's arms, legs, chest and stomach cannot. In short, the lack of DNA in nearly all the " " samples corroborate Hudson's allegation that the non-DNA yielding blood came from another source-namely, Sgt. Patschke.

In addition, for a man covered in blood, there is the inexplicable lack of blood stains on the driver's door handle, steering wheel, shifter, driver's side floor, driver's side of the seat; foot pedals; and the boat and trailer, which Hudson removed during the chase. How Hudson could have left no trace in al the places he had to touch simply defies explanation. Unless, of course, the blood was added after he was removed from the truck before the blood was put on him. Ultimately, Hudson doesn't have to prove the police planted a bloody knife or poured blood on him. He only needs to prove his allegations are plausible enough that his alleged inculpatory statements may have had an impact on the verdict. Based on the test results, the opportunity to plant blood, Hudson's early and consistent allegation blood was poured on him, and the lack of blood in places one would expect to find it, a jury could reasonably conclude the non-DNA yielding "T* samples taken from Hudson's body are not blood from the victim. If they are not blood from the victim, Hudson's allegation that Patchke poured blood on him is not only plausible, but likely true. Evidence of blood tampering would also corroborate Hudson's contention that the bloody knife was planted. By showing a plausible basis for believing the blood found on his person was not human blood, or contaminated with an inhibitory substance, his contention Officer Patschke poured it on him is credible. If officer Patschke planted non-human or contaminated blood on Hudson, a juror could reasonably believe he was equally capable of planting a bloody knife.

S. ATTY. REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE TWO "BRADY CIAIMS" IN HUDSONS' 1-30-09 COMPREHENSIVE PCM THAT HUDSON WAS DENIED HIS FUNDAMENTAL CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND DUE PROCESS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE, I, SECTION 7 OF THE WISCONSIN CONSTITUTION, AND UNDER WIS. STAT. 971.23, WHEN THE STATE DELIBERATELY AND INTENTIONALLY SUPPRESSED HIGHLY EXCULPATORY ITEMS OF EVIDENCE FROM HUDSON AND HIS ATTORNEYS PRIOR TO AND DURING TRIAL.

T. ATTY REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE OF PROSECUTORIAL MISCONDUCT IN HUDSON'S COMPREHENSIVE PCM THAT HUDSON WAS DENIED HIS FUNDAMENTAL CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND DUE PROCESS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE, I, SECTION 7 OF THE WISCONSIN CONSTITUTION

U. ATTY REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE OF A PATTERN OF PROSECUTORIAL MISCONDUCT IN HUDSON'S COMPREHENSIVE PCM THAT HUDSON WAS DENIED HIS FUNDAMENTAL CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND DUE PROCESS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS

OF THE UNITED STATES CONSTITUTION AND ARTICLE, I, SECTION 7 OF THE WISCONSIN CONSTITUTION

V. ATTY REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE OF OUTRAGEOUS CONDUCT IN HUDSON'S COMPREHENSIVE PCM THAT HUDSON WAS DENIED HIS FUNDAMENTAL CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND DUE PROCESS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE, I, SECTION 7 OF THE WISCONSIN CONSTITUTION

FACTS SUPPORTING CLAIMS S. T. U. AND V.

In State v. Lettice, 205 Wis. 2nd 347(1996) prosecutorial misconduct can violate a defendant due process rights to a fair trial. The state's failure to disclose that it took samples but failed to have them analyzed affected the defendant's right to a fair trial because it prevented the defendant from raising the issue of the reliability of the investigation and from challenging the credibility of a witness who testified that the test had not been performed. State v. DelReal, 225 Wis. 2d 565, 593 N.W.2d 461 (Ct. App.1999). "The defense of outrageous governmental conduct requires an assertion by the defendant that the State violated a specific constitutional right, and that the government's conduct was "so enmeshed in a criminal activity that the prosecution of the defendant would be repugnant to the American criminal justice system." *See* ***State v. Gibas***, 184 Wis. 2d 355, 360, 516 N.W.2d 785 (Ct. App. 1994). Unlike the defense of entrapment, which requires that the defendant not be predisposed to commit the crime, the defense of outrageous government conduct, or government abuse, focuses on whether the government instigated the crime. ***State v. Steadman***, 152 Wis. 2d 293, 301, 448 N.W.2d 267 (Ct. App. 1989)." 2020 WI App 13 at Par. 31. Outrageous government conduct occurs when the actions of law enforcement officers or informants are "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." United States v.Russell, 411 U.S. 423, 431–432 (1973)

In this case, the prosecutors and law enforcement violate Hudson's right to a fair trial. Biskupic lied to the Court and withheld exculpatory evidence. Evidence was destroyed. This started as soon as the case began and is continuing today.

As documented above, Biskupic continuously lied about the discovery in this matter. From the beginning he told the Defendant that he had full discovery on 7-31-00 (Ex. 52). But it didn't include photographs, dispatch tapes, dispatch logs, medical records, etc. Biskupic responded again as to discovery on 8-29-00 indicating that Hudson had all the discovery which was false. Items that were exculpatory and were not given to Hudson before trial, includes but is not limited to: index photos (which shows Pamenter's perjury); Exhibit 116 dispatch tape which Hudson's expert Mr. Cain indicates has numerous pauses in it; Officer Reis' report which shows that Patschke and Rosche lied about knowledge that this was a homicide and shows that exhibit 116

was tampered with by the State; KPD dispatcher Madden's log and report which confirms Officer Reis's report and the tampering of Exhibit 116; the destruction of the original reel to reel tape of exhibit 116; the email's between Biskupic and DOJ showing an effort to deny Hudson records for his defense; Carnot's medical reports; the tape of Hudson at the hospital when he asked for an attorney; the second report from DNA analyst Ertl which casts doubt on Carnot's testimony; etc.

The State did not provide two photos on Pamenter's 1st roll that directly bares on Hudson's innocence. Those are 00 and 0. The State has refused to follow Judge Gill's order. Hudson needs a copy of those negatives and photos from those negatives which will show the interior of the truck in the area where the State contends that the knife was found.

At trial, the State entered exhibit 116, without advance notice to Hudson. He could not have an expert examine the tape which later comes back as fraudulent. They suborned perjury as noted above. The DNA tests showed no human blood then someone from the State tampered with samples degrading the DNA. Carnot was not swabbed for DNA on his clothing, but we know that he was responsible for the blood on the truck cap which report was suppressed by the KKPD and the District Attorney's Office. Carnot lied repeatedly in Court which is confirmed by his later statements. Carnot was told by the police to change his clothes, get medical treatment then go to the police department!!! (Ex. 25)

A defendant's due process rights are violated if the police: (1) failed to preserve evidence that is apparently exculpatory; or (2) acted in bad faith by failing to preserve evidence which is potentially exculpatory." *Luedtke*, 362 Wis.2d 1, ¶ 40; (citing *Greenwold II*, 189 Wis. 2d at 67–68 (citing *Arizona v. Youngblood*, 488 U.S. 51, 57–58 (1988))); *see also Greenwold I*, 181 Wis. 2d at 885–86.Evidence is deemed apparently exculpatory when "the evidence destroyed 'possess[ed] an exculpatory value that was apparent to those who had custody of the evidence ... before the evidence was destroyed,' and the evidence is 'of such a nature that the defendant [is] unable to obtain comparable evidence by other reasonably available means.'" *State v. Munford*, 2010 WI App 168, ¶ 21, 330 Wis. 2d 575, 584–85, 794 N.W.2d 264.

Evidence lacks apparent exculpatory value when ... analysis of that evidence would have offered 'simply an avenue of investigation that might have led in any number of directions.'" *Hubanks v. Franks*, 392 F.3d 926, 931 (7th Cir. 2004) (citing *Arizona v. Youngblood*, 488 U.S. 51, 57 n.* (1988)).Bad faith is shown if "(1) the officers were aware of the potentially exculpatory value or usefulness of the evidence they failed to preserve; and (2) the officers acted with official animus or made a conscious effort to suppress exculpatory evidence." *Luedtke*, 362 Wis. 2d 1, ¶55 (citing *Greenwold II*, 189 Wis. 2d at 69). That said, where the lost or destroyed evidence is not merely potentially exculpatory, but actually or apparently exculpatory, no showing of bad faith is required to prove a due process violation. *State v. Huggett*, 2010 WI App 69, ¶11, 324 Wis. 2d 786, 783 N.W.2d 675.

Atty Rebholz did not bring up these matters and did not document the violations. He fell below the standards. He indicated that he was going to bring up a pattern of prosecutorial misconduct.

See Hudson's affidavit and Rebholz letter to Atty Bartman. (Ex. 118) The pattern of prosecutorial misconduct shows the intent and motive of Biskupic and Schneider but also can be the basis for dismissal. See Hoppe v. State, 74 Wis. 107, 246 N.W.2nd 122 (1976) This pattern is most telling.

In State v. Mark Price, Winnebago County case number 94CF285, DDA Biskupic filed charges against Price for attempting to hire a hitman to kill DA Joseph Paulus who was Biskupic's boss. A special prosecutor found that Biskupic engaged in misconduct by not turning over a tape recording were Price told informant Darin Beverly that he wasn't going to try and have Paulus killed. Beverly had told officials that he would cooperate if he got a sentence reduction which was agreed upon. Biskupic elicited testimony in court from Beverly which was false. Beverly testified that under Biskupic's questioning that he did not ask and was not given any consideration. Biskupic later wrote a letter asking that Beverly's sentence be reduced. Charges were filed days before a primary election where Paulus was facing two opponents!!! The Court adopted the findings of the special prosecutor and dismissed those charges. (See Ex.118) This is the same behavior that happened in this case by Biskupic by not turning over Ex. 116 and later it being determined by an expert that it was tampered with. Then the original reel to reel recording is destroyed despite the assurance by the State that it would be kept.

The Joseph Frye case was another Biskupic case where evidence was destroyed and later was overturned due to DNA evidence. (Ex 118) Biskupic had reports destroyed resulting in him being removed from a case. (Ex. 119) Ex. 120 documents other cases where Biskupic reduced, not filed charges, and a recommendation for a child pornographer not to go to prison if they would pay money to a crime prevention fund controlled by Biskupic. Not to be out done, Schneider had cases where evidence was lost and there was prosecutorial misconduct. (Ex. 121) Atty Rebholz had plenty of evidence, but he did not follow up with Hudson.

W. BISKUPIC COMMITTED MISCONDUCT BY FALSELY STATING THE NUMBER OF CONVICTIONS THAT HUDSON HAD AND BY MINIMIZING THE NUMBER OF CONVICTIONS BY STATE WITNESSES AND ATTY REBHOLZ WAS INEFFECTIVE BY NOT FULLY PRESENTING THE ISSUES AND DOCUMENTING THE CLAIMS WHICH RESULTED IN A VIOLATION OF HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

Biskupic committed misconduct by lying to the Court in his 906.09 Notice by telling the Court that Hudson had "7 prior criminal convictions" when Hudson actually only had "3 prior criminal convictions"! Biskupic did not file the notice until the trial instead of complying with the discovery statute requirement of a reasonable time before trial. On the 3rd day of trial, Biskupic filed the State's 906.09 Notice regarding Hudson's criminal convictions, and Biskupic told the Court that Hudson's criminal records "CIB printout report" shows Hudson has "7 prior criminal convictions" and that if Hudson testifies he will have to acknowledge those 7 convictions to the jury! (See page's 14-15, 3/7/01 trial Tr.) The "CIB" Printout Biskupic filed with the Court and gave to Hudson, was "printed out of March 6, 2001 the 2nd day of trial"! (See Ex. 123) On the

last day of trial, Hudson told the Court he wants to testify, and Biskupic again told the Court that Hudson's criminal records shows Hudson has "7 prior criminal convictions" and he'll have to acknowledge those 7 convictions to the jury! The Court then told Hudson he's going to have to tell the jury he has "7 criminal convictions! (see 3/9/01 trial Tr. page's 27-28). However, Hudson actually had only 3 criminal convictions per the CIB printout. On "page 6" of Hudson's CIB printout report, "conviction 1" is for a hit-and-run accident". However, on "page 9" of the CIB printout report, Biskupic's claim that this is "conviction #2 for burglary" is wrong, because this was actually for a "parole violation", not the actual conviction for burglary. The actual original charge of burglary is on "page 13" of the CIB printout report. Hudson plead guilty and was sentenced to 6 months-180 days in prison"! (See page
13 CIB printout")

Atty. "Rebholz" did raise the issue in my 1/30/09 PCM that "Biskupic committed misconduct when he overstated the number of Hudson's prior criminal convictions" by telling the Court & jury Hudson had "7 prior criminal convictions". However, he never argued or showed the Court that Hudson only actually had "3 prior criminal convictions", he only made the "bald assertion" Hudson had less convictions, but never supported it by facts-evidence!). He clearly failed to adequately raise-develop this issue!! Even the attorney General's Office argued in the Covrt of Appeals in their 1/27/11 response Brief, that atty. Rebholz "did not adequately plead-develop this issue in either his PCM in the trial Court or in his "Brief in the COA's".

DA Biskupic elicited false testimony from 3 state witnesses, "Alvin Thies, Mike Borchert, and Shirley Schultz" by having and allowing them to testify that they only had a certain amount of prior criminal convictions, when he clearly knew that they had more criminal convictions than what he had them testify too and what he told the Court and the defense they had! Rebholz did r a i s e the issue in my January 30., 2009 Comprehensive PCM for new t r i a l that (1) the State committed misconduct when it understated the number of 2 of its witnesses "Alvin Thies and Shirley Schultz's" prior criminal convictions; and (2) that atty. Carn's was ineffective for failing to request a hearing pursuant to Wis. Stat. 906.09 to determine the correct number of their "Thies's and Schultz's" prior criminal convictions. However, Rebholz totally failed to adequately raise this issue because (1) he failed to clearly show the Court exactly how many prior criminal convictions Thies and Schultz to the Court,; (2) he failed to attach their criminal records to his motion; and (3) he failed to attach DA Schneider's 4-17-08 postconviction discovery response to his motion where she clearly admits that Thies, Schultz and Borchert all had more prior criminal convictions that what Biskupic told the Court, the Defense and the jury they had! In addition, Rebholz failed to raise the issue regarding Mike Borchert's prior criminal convictions and how Biskupic lied to the Court regarding the correct number of his prior criminal convictions and had Borchert lie to the Jury by testifying he had less convictions than what he actually had! Schneider lied to the Court stating that the court's didn't consider traffic violations as convictions. If that was so then why did they count it in Hudson's count. But the most important information that she gave was that it was Biskupic and his investigator Malchow who prepared the information about prior record. (Ex. 122)

Ex. 122 shows that DA Biskupic knowingly elicited false testimony from Schultz on the 3rd day of Hudson's trial, when he had her testify to the jury that she only had "4 prior criminal convictions" because she actually had "5 prior criminal convictions". On the 1st day of trial,

Biskupic filed the state's 906.09 notice claiming that Schulte only had "4 prior criminal convictions". Again, violating the discovery statute. Biskupic's office had prosecuted and Convicted Schultz for 5 of her convictions.

On the Ist day of Hudson's trial, DA Biskupic filed the state's "9906.09 Notce" claiming that "Thies" only had "5 prior criminal convictions." However, Biskupic did not attach a copy of Thies ' criminal record to his 906.09 notice to "prove his claims that Thies only had 5 prior convictions". The records show that this had 15 criminal convictions. (Ex. 122) Biskupic's Office had prosecuted and convicted Thies for 12 of his convictions" while "Biskupic & Schneider' were the DA's in Outagamie County!!

On the 1st day of Hudson's trial, Biskupic filed the State's 906.09 Notice claiming that Borchert only had "1 prior criminal conviction'. Later that day, Biskupic presented testimony from Borchert. Biskupic immediately asked Borchert that "isn't it correct that you have 1 criminal conviction, is that correct? Borchert answered "yes". Borchert actually had "4 prior criminal convictions". (Ex. 122)

Atty Rebholz did not adequately present and document the issue. This case hinged on who the jury believed. The State intentionally over "counted" Hudson convictions and under counted the State's witnesses. Misrepresenting the number of convictions can be a basis for a new trial. State v. Powell, 205 Wis. 2nd 112, 555 N.W. 2nd 410 (1996).

X. HUDSONS' POST-CONVICTION COUNSEL ATTY, REBHOLZ WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE IN HUDSON'S 1/30/ 09 COMPREHENSIVE PCM FOR NEW TRIAL THAT HUDSON WAS DENIED HIS FUNDAMENTAL CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND DUE PROCESS "WHEN HUDSON WAS COMPELLED (FORCED) TO TESTIFY AT HIS TRIAL IN ORDER TO OVERCOME THE IMPACT OF HIS ILLEGALLY OBTAINED AND USED ALLEGED CONFESSION,WHICH THEREBY CAUSED HUDSON TO RELINQUISH HIS FUNDAMENTAL RIGHT TO CHOOSE WHETHER OR NOT TO TESTIFY IN HIS OWN DEFENSE.

On the night of the incident, the police took Hudson to the hospital to execute a search warrant on his body. While at the hospital, Kaukauna PD Officer "Brad Sanderfoot" placed a "tape recorder" on the cot where Hudson was laying on to record his statements. (EX. 124) Sanderfoot's report has never been entered into evidence. Atty. Rebholz did reference Sanderfoot's report in his 1/30/09 PCM in support of the suppression of the tapes prior to trial, etc., but he failed to attach a copy of this report to his motion. After Sanderfoot placed the tape recorder on the cot Hudson was laying on, KPD Officer Manion read Hudson his "Miranda Rights." Manion claims in his report, that right after he read Hudson his Miranda rights, KPD Evidence Tech. Officer Donald Krueger read Hudson the "informing the accused form" and that at this point, Hudson said: "Don't I have a right to talk to an atty., what's going on here" and that Officer Sanderfoot responded by saying: "not at this time."(See P.16 Manion's report, Ex.25). Manion "knowingly lied in his report" by claiming that Hudson said "Don't I have a right

to talk to an atty., what's going on here," because Hudson actually said first: "I want to talk to a lawyer" (but Manion left it out of his report), and then repeated reiterated that he wanted a lawyer, by stating "Don't I have a right to talk to a lawyer, what's going on here,' and they refused to let Hudson talk to a lawyer.

Now, after the search warrant was completed, officer's Manion and Lt. Kevin Shepardson took Hudson to the KPD to interview him. Manion-Shepardson claims in their report that when they placed Hudson into the interview room, Manion "reminded Hudson of his Miranda rights, and asked him if he remembered them from when he read them to him while at the hospital, and then he read them to him again, and Hudson said he was willing to talk to them, and then confessed to stabbing the victim, Etc." and that the "confession was tape recorded, but th etape erased itself." (See PP.17-28, Manion's-Shepardson's report, Ex. 25). The problem is that Hudson's expert indicates that the machine could not erase the tape itself. (Ex. 63 & 64)

Now, on the 1st day or trial, Hudson asked the Court to "suppress his alleged confession because he asked for an atty. at the hospital, and based on the State's failure to preverve destruction of the tape of his alleged confession." Biskupic told the Court that (a) Hudson never asked for "invoked his right to an atty. that he only made an ambiguous request regarding an atty.", and that the Court should also deny the request to suppress because he talked to atty. Bartman (before he withdrew from the case) and Bartman told him that he & Figy weren't going to file & a motion to suppress because they saw no merit to it based upon their review of the record." The Court then denied Hudson's request to suppress without providing any reasons why! ((PP.14-16, 3/5/01 trial Ir.) Bartman's notes contradict Biskupic's statement. (See Ex. 126)

Biskupic intentionally lied to the Court. Now, on the 4th day of trial, both officer's "Manion & Shepardson" testified at great lengths that "Hudson confessed to stabbing the victim, Etc." (See 3/8/01 Trial transcript) Now, after Hudson heard Manion & Shepardson testify that he allegedly confessed to them, Hudson decided that "he had no choice but to testify and tell the jury they were lying, and that they were framing him," Hudson then told the Court he changed his mind and wants to testify. The Court told Hudson he could "only testify to facts, Etc." Hudson was confused about what this meant. Hudson then told the jury that "Manion and Shepardson were lying about the tape erasing itself and were framing him and that he was innocent.'

Now, after trial, Hudson's 1st atty. "Jonathan Smith" filed a PCM raising 8 issues,Including 1 Issue that the "trial Court erred in admitting Hudson's alleged confession into evidence without conducting the required Miranda- Goodchild hearing." On 12/21/01, the State "Biskupic' filed a Response to Smith's PCM. Biskupic again argued to the Court that (a) Hudson only made an ambiguous statement to Manion & Shepardson to about a lawyer and was clearly not invocating his right to counsel, and (b) that there was clearly not a constitutional basis to challenge the alleged confession and that's why none of Hudson's trial atty.'s never filed a motion to suppress"! (See enclosed Biskupic's 12/21/01 Response, Ex.125).

After Atty Cook filed the Supp. PCM on 8/5/03, Cook filed a"Discovery Demand &Motion" with the State &Trial Court on October 15, 2004, specifically demanding that the State turned over a copy of 'sanderfoot's hospital Audio Tapes" because the State suppressed them from the defense prior to trial. The Court then granted Cook's motion and ordered the State to turn over

Sanderfoot's audio tapes to Cook, On October 24, 2004, the State turned over a copy of the audio tapes to Cook! the audio tapes clearly & undeniable prove that Hudson "did in fact invoke his right to an atty, while at the hospital, (after being read his miranda rights by Manion), because Hudson states in these exact words, "I want to talk to a lawyer" and then Hudson repeatedly states "Don't I have the right to talk to a lawyer, what's going on here" when the police refuse to allow Hudson to talk to one!! (See transcript of the hospital tape, Ex.3)

Now, Sanderfoot's audio tapes clearly prove (1) that Hudson Invoked his right to counsel, (2) That Manion & Shepardson clearly made a false report by claiming "Hudson only said: "Don't I have a right to talk to a lawyer, what's going on here," because Hudson clearly said before that, "I want to talk to a lawyer," but they left that out of the report, (3) Biskupic clearly repeatedly committed "misconduct" by lying to the Court on 3/5/01 when he told the Court that the records clearly show Hudson never asked for an atty. while at the hospital, which he clearly knew was false because he suppressed Sanderfoot's audio tapes prior to trial from the defense, and when he lied to the Court post-conviction when he again told the court Hudson never asked for (invoked) his right to counsel!!

The Court of Appeals already ruled that my alleged confession should have been suppressed based on the Miranda violation. This ruling proves Hudson's claim that he was compelled (forced) to testify at his trial in order to overcome the impact of the illegally obtained and used alleged confession" and atty. Rebholz clearly should have raised this Issue during my direct appeal.

X. POSTCONVICTION COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO RAISE OR SPECIFICALLYARGUE GOVERNMENTMISCONDUCT UNDER NAPUEV. ILLINOIS IN A VIOLATION OF HUDSON'S DUE PROCESS RIGHTS UNDER THE 5TH & 14TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLES 1 SECTIONS 7 & 8 OF THE WISCONSIN CONSTITUTION

A defendant's due process rights are violated when the State uses evidence at trial that it "knew or should have known" was false, or failed to correct evidence it knew was false. Napue v. Illinois, 360 U.S. 264, 269 (1959); United States v. Agurs, 427 U.S. 97, 103-104 (1976). This is true even where the false testimony goes to the credibility o f the witness rather than directly to the guilt of the defendant. Nape, at 269. This duty applies not only to prosecutors, but all "representatives of the State." Napue, at 269. See also Pyle v. Kansas, 317 U.S. 213, 216 (1942) (attributing the duty to "state authorities"); Mooney v Holohan, 294 U.S. 103, 112 (1935) (attributing duty to "the State"); Smith v. Florida, 410 F.2d 1349, 1350-51 (St Cir. 1969) (applying this duty to police officers who suborn perjury even without the prosecutor's knowledge); Curran v. Delaware, 259 F.2d 707, 713 (3d Cir. 1958) (Adopting Pyle, and finding that law enforcement officers violated their constitutional duty by suborning perjury).
The use of perjured testimony is subject to "strict standard of materiality." Agurs, 427 U.S. at 104. The conviction must be set aside if there is "any reasonable likelihood that the false testimony could have affected the judgment of the jury." Id., at 103. "Implicit" in the requirement of materiality "is a concern that the suppressed evidence might have affected the outcome of trial." (emphasis added). Id., at 104. The court's use of the subjunctive "might" indicate

"possibility, not necessarily actuality... Ouimette v. Moran, 942 F.2d 1, 10 (Ist Cir. 1991). Prejudice to the defendant is further "sharpened" when the prosecutor relies on such evidence in its summation, or even if the statements the prosecutor makes are factually true, "mislead[s] [the jury] based on the natural and probable inferences it invites. "Jenkins v. Artuz, 294 F.3d 284, 294 (2nd Cir. 2002).

Exhibit 130 is Hudson's affidavit regarding his dealings with Atty. Rebholz. It shows that Atty Rebholz knew and should have argued Napue violations, but he didn't. With Napue, Hudson doesn't have to do a harmless error analysis. Rebholz failing to argue Napue was clearly ineffective assistance of counsel.

Postconviction counsel did not articulate, argue or apply the proper harmless error test either at the circuit court level or on appeal. In turn, the circuit court denied Hudson's post-conviction motion because it could not find "a substantial probability that a new trial would result in a different outcome."28 (R.294:18). There's no showing of which harmless error standard, if any, the circuit court applied.

The standard for harmless error t e s t requires the State to prove "beyond a reasonable doubt" that "the error complained of did not contribute to the verdict obtained. " (Emphasis added). Jensen v. Clements, 800 F.3d 892, 902 (7th Cir.2015), citing Satterwhite v. Texas, 486 U.S. 249, 258-259 (1988). The test requires more than a sufficiency of the evidence determination. Id. The Court may not simple catalogue the State's evidence, but must "engage with the defense evidence" that may "rebut or cast doubt" on the State's evidence. Id. at 904. "Undisputed" evidence that is "circumstantial and subject to more than one interpretation" is not enough. Id., at 28-29, 33). Cumulative evidence is not enough. Id. Again, the circuit court made no harmless error analysis at all, and the court of appeals relied entirely on the State's evidence while summarily dismissing any possible evidence to the contrary. In addition, the level of harmless error the State is required to prove varies depending on the nature of the government misconduct. United State's v. Agurs, 427 U.S. 97, 103 (1976).

If, for example, the "undisclosed evidence demonstrates that the prosecution's case includes perjured testimony and that the prosecution knew, or should have known, of the perjury," the harmless error standard includes "a strict standard of materiality." In such a case, the conviction "must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." Id. at 103. This would apply to Nape violations. See PP.10-45, infra. Likewise, when the same strict standard applies to a Brady violation is preceded by "a pretrial specific request for evidence," the same strict standard of materiality applies. Id., at 104. Only when the defense made "either no discovery request or only a general request for "Brady" material, and exculpatory material is withheld, is the standard of materiality more favorable to the government." The defendant will be "entitled to a new trial only if the undisclosed evidence, viewed in the context of the entire record, creates a reasonable doubt that other- wise would not exist." United States v. Vozzella, 124 F.3d 389, 391-392 (2nd Cir.1997). Neither postconviction counsel, the circuit court, nor the court of appeals acknowledged or applied this test.

Because the hospital tape was specifically and repeatedly demanded by the defense and the State's failure to disclose the hospital tape was a direct cause of the confession's admission, the

harmless error standard contains a strict standard. The "materiality" requirement "is a concern that the suppressed evidence might have affected the outcome of trial . " (Emphasis added). Agurs, at 104. The subjunctive "might" indicate "possibility, not necessarily actuality..." Ouimette v. Moran, 942 F.2d 1, 10 (Ist Cit.1991). In short, Hudson need only show "concern" the verdict might have been affected.

The Court of Appeals relied heavily on the evidence of Hudson's confession. After years the State finally turned over the tape and it shows that Hudson's statements would have been suppressed. That changes everything as to how the jury would have looked at the evidence. But look at more evidence, including the newly discovered evidence. Carnot's statement to Dee Hall shows that the second-degree conviction should have never bee added. Carnot was responsible for the victim's DNA being on the truck cap.

In finding harmless error, the court of appeals relied on the fact that Hudson had visible blood on his "arms, chest, stomach, legs, and feet." (COA, P9). According to Hudson, he was arrested, put in the back of Patschke's squad car, and fell asleep. He awoke to find Patschke with a "cup...pouring blood on his leg,... (171:125). He also told Manion at the hospital an officer poured blood on him. (171:129).

Blood samples were taken from the front of Hudson's arms, legs, stomach, and chest. (137:296-298). These samples were labelled as "T" by the Wisconsin Crime Lab (WCL), followed by a numerical designation depending on the location ofhis body. (138:189). "TI" was taken from Hudson's left leg and foot; "T2" was taken from his right hand and wrist; "T3" was taken from his left hand and wrist; "T4" was taken from his right foot; and "TS" was taken from his left chest. Each of these locations were sampled using 2 Q-tips. (138:189). A gauze pad was used to collect a sample from Hudson's left leg and labelled "U1". Several of these samples were sub-divided further as additional postconviction testing occurred.

The State's DNA witness was John Ertl from the state crime lab. Ertl tested two of the "T" samples prior to trial: "TI (left foot)" and "T2 (right hand)." Ertl started with "T1", which was the "brightest, [and] deepest red staining of the swabs" and contained "a lot of blood." (138:201; 171:93). He first used a"presumptive13 blood test to determine whether the swab contained blood. The result was positive. He then attempted to extract DNA from the sample. (138:191). After two attempts, Ertl was unable to extract any human DNA. At trial, Ertl offered no explanation other than stating TI "turned out to not be human blood." (138:201). Ertl did find a mixture of DNA on T2 consistent with having come from the victim and Hudson. (138:194-195) The "presumptive" blood test Ertl performed was a phenolphthalein test. (138:190). A presumptive test would be analogous to a field test. The test shows the "possibility" of blood and is vulnerable to false positives (138:190) but is quick and cheap. As Ertl acknowledged, it may react to certain metals, plant extracts, and other animal species. (Id.; 171:95).

Ertl testified at a postconviction hearing in 2003. This time he was specifically asked how it was possible he could not extract any DNA from what he believed to be his best blood sample (TI). He stated:Well, there's basically two possible explanations that I can think of right off the bat. If there is blood there and it's been subjected to chemical, or environmental factors which would cause the DNA to degrade, if the source had been human, I might not find human DNA. If the

source had not been human, then I would not find human DNA. (Emphasis added) (171:93-94). The circuit court denied Hudson's request for further testing. That decision was reversed on appeal. Ultimately, samples from T1, T2, T3, T4, T5, and UI were sent to various labs for DNA testing. Molecular Forensics Laboratory (MFL) is a lab which specializes in detecting certain animal DNA. 41 It tested five derivative samples of T I (TIa; TIb-1; TIb-2; TIc-1; and TIc-2); as well as T2a; T3a; TSa; and U1. The lab was unable to extract any DNA whatsoever from TIb-1; TIc-1; TIc-2; T2a; T3a; and TSa. (Appendix: 45; 247:18). Its Of note, MFL was unable to extract any DNA from T2, the only sample Ertl claims contained DNA matching the victim. Sample T4 was tested by an entirely different lab, Reliagene Technologies, Inc. This likewise produced "no results due to insufficient or excessively degraded DNA."16 (Appendix: 42; 247:19). T a was also tested at Orchid Cellmark Laboratories. It yielded no result. (Appendix: 47).
Regardless of whether Ertl's T2 result is correct, the question remains as to why all the other T samples lacked any DNA whatsoever, 71 Ertl was again asked to explain this result at a subsequent hearing. Apart from the sample not being human blood, he listed three possible causes: bacterial, environmental (ultraviolet), or chemical. (247:20). Given how fresh the samples were, he agreed that neither bacterial nor environmental degradation was likely. (247:20, 24). On the other hand, chemical degradation could have occurred quickly. (247:20. According to Ertl, the absence of DNA was "weird." Usually, if something affects the DNA itself, it will also affect the appearance of the blood. Even then, he's been able to extract DNA from blood stains that were black or green or even had mold growing on them. (247:23). He did not know, however, whether a "chemical attack" would have any effect on the sample's appearance. (247:23). In sum, four independent labs were unable to extract human DNA from any of the "T" blood samples that were tested. The WCL was unable to extract DNA from TI. WCL was only able to extract human DNA from T2, a result MFL was unable to reproduce. Hudson sought further testing to determine first, whether the substance taken from his body was in fact blood; second, whether the sample was human blood; and third, whether it contained any trace elements inconsistent with human blood.

A TI sample was tested by Dr. Christopher Palenik at Micro-Trace in Chicago. Based on three different tests, he concluded the sample was blood. A specific testi8 for human blood, however, was negative.19 A sample of TI was sent to an outside lab for DNA testing in an attempt to speciate the blood. As before, the lab was unable t o extract any DNA for testing. The possible reasons generally include: "(a) the sample is not mammalian in origin, (b) DNA that might be present is obscured by an inhibitor, or (c) the DNA is too degraded for analysis.". Dr. Palenik also tested TI for trace organic compounds. Elemental analysis showed a low concentration of fine, iron-rich particles of unknown origin. He also found "several unexplained compounds at trace levels (fn omitted): pyridine, a guanidine compound, and a benzoate." As for the benzoate and the guanidine compound, Dr. Palenik noted:

This benzoate is most consistent withdipropylene glycol dibenzoate, which is most often used as a plasticizer alternative to phthalates. Therefore, it is possible that this compound originated from some type of plastic container (such as a prior storage tube (fn omitted]). The mass spectrum of the indicated guanidine component is not particularly diagnostic as it is consistent with both guanidine and with guanidine thiocyanate (and possibly other compounds). Guanidine thiocyanate is used in some RNA and DNA extraction processes and is a protein denaturant. [fn omitted] Guanidine thiocyanate was not used by the DNA laboratory used by Microtrace.

The presence of both the iron-rich particles and the guanidine compound "could have acted as inhibitors to the process of sequencing DNA." In sum, the sample is blood. There is, however, a good probability the blood is not human (and possibly not of mammalian origin). This would explain why four separate laboratories were unable to extract human DNA from fresh blood samples which, under normal circumstances, would have been ideal for DNA testing. The presence of a benzoate also suggests the sample may have come from a plastic storage tube, such as those used to store blood from an autopsy. The presence of a guanidine component suggests the sample could have been contaminated with guanidine thiocyanate, an inhibitory substance, known to prevent DNA analysis. While these compounds were found at trace levels, Dr. Palenik noted that the "concentration and range of detectable compounds could have changed over time."

There were two blood samples from Hudson that were positive for the victim's DNA. The first was the blood from Hudson's right hand (T2). This result came from the Wisconsin Crime Lab in its original testing. (Appendix: 27). The second was the blood from Hudson's sandal. This result came from post-conviction testing by a private lab (Reliagene). (Appendix: 41-42). Neither of these results are particularly inculpatory as either could have resulted from the inadvertent and innocent touching of known blood sources. The presence of blood on Hudson's right hand could have easily come from touching the blood stains the victim left on the passenger side of the seat. (137:98). The presence of blood on Hudson's sandal could have easily come from Hudson walking on the bloodied roadway. In fact, Carnot also had the victim's blood on his shoes.21 The more interesting question is why these samples produced DNA while the other samples taken from Hudson's body did not. If they all came from the same source, at the same time, and were collected in the same way, at the same time, they should have all yielded DNA. The most likely explanation for why they did not is because they did not all come from the same source. The victim's blood on Hudson's sandal and right hand can be explained by the inadvertent touching of known victim blood sources. The remaining samples taken from Hudson's arms, legs, chest and stomach cannot. In short, the lack of DNA in nearly all the samples corroborate Hudson's allegation that the non-DNA yielding blood came from another source-namely, Sgt. Patschke.

In addition, for a man covered in blood, there is the inexplicable lack of blood stains on the driver's door handle, steering wheel, shifter, driver's side floor, driver's side of the seat; foot pedals; and the boat and trailer, which Hudson removed during the chase. How Hudson could have left no trace in all the places he had to touch simply defies explanation. (171:33, 82- 84). Unless, of course, the blood was added after he was removed from the truck.

Ultimately, Hudson doesn't have to prove the police planted a bloody knife or poured blood on him. He only needs to prove his allegations are plausible enough that his alleged inculpatory statements may have had an impact on the verdict. Based on the test results, the opportunity to plant blood, Hudson's early and consistent allegation blood was poured on him, and the lack of blood in places one would expect to find it, a jury could reasonably conclude the non-DNA yielding "T* samples taken from Hudson's body are not blood from the victim. If they are not blood from the victim, Hudson's allegation that Patchke poured blood on him is not only plausible, but likely true.

Evidence of blood tampering would also corroborate Hudson's contention that the bloody knife was planted. By showing a plausible basis for believing the blood found on his person was not human blood, or contaminated with an inhibitory substance, his contention Officer Patschke poured it on him is credible. If officer Patschke planted non-human or contaminated blood on Hudson, a juror could reasonably believe he was equally capable of planting a bloody knife.

There is still evidence that needs to be examined. The photos 00 and 0 must be printed properly and provided. Officer Borman lied about his ability to get this done. This is crucial evidence that was acknowledged by Judge Gill, but overridden by Judge Morrison.

MACHNER-EVIDENTIARY AND EVIDENTIARY HEARING

First, this Court must grant Hudson a Machner hearing on his ineffective assistance of post-conviction counsel claims to hear testimony from attorney Rebholz as to Hudson's claims of his ineffectiveness. See State v. Machner, 92 Wis. 2d 797, 285 N.W. 2d 905 (Ct.App. 1979). Second, Hudson is entitled to an evidentiary hearing to prove his claims because the facts asserted in his Petition, if true, require relief. See State v. Bentley, 201 Wis. 2d 303, 309-11, 548 N.W. 2d 50 (1996); and State v. Allen, 2004 WI 166, P.14, 274 Wis. 2d 568, 682 N.W. 2d 433, "if a defendants postconviction motion on its face alleges sufficient material facts, which, if true, (proven at an evidentiary hearing), would entitle the defendant to relief, a trial court had no discretion and must hold an evidentiary hearing. See also Wis. Stat. 974.06(3)(c), "unless the motion and files and records of the action conclusively show that the person is entitled to no relief, the Court shall grant a prompt hearing."

Hudson submits to this Court that his motion clearly presents "sufficient material facts, to support his claims, which, if true, would entitle him to relief." Hudson further requests a hearing so he can present testimony from his expert "Dr. Palenik" regarding his forensic test results.

The people must be called at an evidentiary hearing: OFFICER MARY SCHUELKE; OFFICER ROBERT PASCHKE; GERALD ROSCHE; REX SWANSON; TODD ZOLKOWSKI; DAN PAMENTER; RANDY REIFSTECK; DAVID JACKSON; JOHN MANION; WISCONSIN STATE CRIME LAB DNA EXPERT "JOHN ERTL; VINCENT BISKUPIC; CARRIE SCHNEIDER; DAVID CARNOT. With the evidence that has been discovered all of their testimony is questioned. The DNA evidence shows that testimony must be taken. The fact that trial exhibit 116 was tampered with per Expert Cain. We know that evidence was withheld, the Court must determine why. The cumulative problems call for an evidentiary hearing. The Defendant requests: Dismissal of all charges based on prosecutorial misconduct, Outrageous Governmental Conduct, subornation of perjury, knowingly using and encouraging perjured and false evidence, tampering with evidence, suppressing and destroying highly exculpatory evidence that shows the Defendant's innocence, and Ineffective Assistance of both Trial and Post-conviction counsel.

IN THEALTERNATIVE, HUDSON IS ENTITLED TO A NEW TRIAL NI THE INTEREST OF JUSTICE.

Even if this Court concluded that Hudson is not entitled to a new trial based on prosecutorial misconduct on his Nape claims, or on his ineffective assistance of counsel claims, this Court should still order a new trial in the interest of justice. This Court has statutory and inherent authority to order a new trial in the interest of justice if the real controversy had not been fully tried or if it is probable that justice has for any reason miscarried. Wis. Stat. $809.15(1); State v. Armstrong, 2005 WI 119, PP.110- 113, 283 Wis. 2d 639, 700 N.W. 2d 98, State v. Harp, 161 Wis. 2d 773, 775, 469 N.W. 2d 210 (Ct. App. 1991).29

In State v. Henley, the Wisconsin Supreme Court held that a circuit court may not invoke its inherent authority to entertain a freestanding interest of justice claim untethered from any other claim or procedural mechanism, in collateral proceedings. 2010 WI9 7 ,975-77, 328 Wis.2 d 544, 787 N.W. 2d 350. According to Henley court, "S$974.02 and 974.06, by its terms, provide the primary statutory means of postconviction, appeal, and post-trial relief for criminal defendant's." Id. at 139. Consequently, a criminal defendant may raise an interest of justice claim pursuant to $974.06, so long as (1) the interest of justice claim, "involved one of the types of claims allowed by [$974.06]" and (2) "was associated with a more specific "sufficient reason allowing it to pass the Escalona bar." Id. at 163, n25. Hudson's interest of justice claim satisfies both of these requirements.

First, the claims are not standing alone, but are "tethered" to other legitimate claims of constitutional dimension. Second, Hudson has "sufficient reason" for not raising the 974.06 claims earlier: The Brady portion of Hudson's interest of justice claim were not available at the time of trial, or during Hudson's direct appeal, and is also based on his ineffective assistance of post-conviction counsel claims. See Escalona, 185 Wis. 2d at 181-182.

The claims and evidence described above require a new trial in the interest of justice. First, the "real controversy was clearly not fully tried, because the State actively misled the Court and presented false testimony to the jury, suppressed evidence which the jury never got to hear, therefore, the jurors were not in a position to assess the version of the facts the State presented. Instead, the jurors accepted the State's version without knowing that important State's witnesses suffered from crippling credibility problems. Second, it is more than probable that justice miscarried. The enormous amount of prosecutorial conduct described above---eliciting, using and failing to correct knowing false testimony and withholding exculpatory evidence--clearly constitutes a miscarriage of justice. Thus, a new trial is warranted in the interest of justice. It must be stressed to the Court, that this Court need not find that that there "the outcome would probably be different on retrial . " (See State v. Hicks, 2002 Wis. 2d 150, 159-160, 549 N.W. 2d

435 (1996), when the real controversy has not been fully tried, or it is probable that justice for any reason miscarried. Id. at 160.

CONCLUSION

For the reasons stated above, this Court must grant Hudson's petition for new trial, or grant him an evidentiary hearing to prove his claims because the facts asserted in his petition, if true, require relief.

Under oath, Hudson states that the allegations in his petition are true, except to those matters in which he did not personally participate, and as to those matters, he believes them to be true.

Respectfully Submitted

This date: 14th of August 2023

Kenneth A. Hudson

Kenneth A. Hudson, pro se