

Lee Chang,
Petitioner,

19 - 5224

Case No.

ORIGINAL

V.

State of Wisconsin Court of Appeals,
Respondent.

Petition For Writ of Certiorari

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Question(s) Presented

Was Recorded Evidence By Law Enforcement and Presented By The Prosecutor Given In A Timely Manner As Well As Can It Be Considered A Brady Violation Due To Recorded Evidence Not Being Fully Translated?

Was Trial Counsel Ineffective And Such Ineffectiveness Deprive Chang of Fair 'Due Process' Pursuant To Sixth Amendment of United States Constitution?

Should Prior Statements By Z.Y. Be Admissable Under 'Fundamental Fairness' Doctrine Because They Contradict Statements Law Enforcement And The Prosecutor Wishes To Use And Such Statements Were Never Truly Evaluated Under An Evidentiary Hearing?

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The decision of Wisconsin Court of Appeals was on December 14, 2017 and the Wisconsin Supreme Court denied review on May 8, 2018. They are listed under and published as 'State of Wisconsin v. Lee Chang', 2018 WI 65. In regard to the decision by Wisconsin Court of Appeals: 'State of Wisconsin v. Lee Chang', 2018 App 8, 379 Wis. 2d 767. The decisions of Wisconsin Court of Appeals is attached at the end of brief and listed as appendices A.

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Opinions Below

The opinions of and decision of Wisconsin Court of Appeals has been published or will be published in regard to case 'State v. Lee Chang', 2018 App 8, 379 Wis. 2d 767. The publication of this case has not been updated and brought forth to Racine Correctional Institution. Therefore, at this time no page number or the exact publisher can be completely listed other than the referenced case number.

There is no publication of the decision of Wisconsin Supreme Court because the Wisconsin Supreme Court denied review of this case.

Jurisdiction

The Supreme Court of United States may have jurisdiction over this case because it is within the time frame. The decision of Wisconsin Supreme Court denying review was on May 8, 2018.

This petition for writ of certiorari was originally mailed on July 7, 2018 and was filed on August 7, 2018 by United States Supreme Court Clerk. It was requested by the clerk that this petitioner correct and resubmit within 60 days of the November 13, 2018 letter. Therefore, the petitioner has complied with the time frame necessary for the Supreme Court of United States to have jurisdiction over this case.

Constitutional and Statutory Provisions

This case argues the Constitutional provisions of 'Due Process of Law' under Sixth Amendment of United States, 'Due Process' under Sixth Amendment of United States Constitution, 'ineffective assistance of trial counsel' that references 'Due Process' under Sixth Amendment of United States Constitution, and finally 'Fundamental Fairness' Doctrine in regard to translation of discoverable evidence by law enforcement and prosecutor; which is believed to be under 'Due Process' within Sixth or Fourteenth Amendment of United States Constitution.

In terms of State of Wisconsin issues that may contradict Constitutional or federal statutes, doctrines, or Constitution; the following are State statutory provisions brought forth: 'Due Process' under Wisconsin State Constitution, 'Ineffective assistance of counsel' under 'Due Process, and Wisconsin Statutes §908.01(4)(b)(2).

Statement of The Case

The heart of this case challenges whether recorded evidence by law enforcement, presented to the prosecutor, and then given to the defendant's attorney not in a timely manner as well as the recording(s) were not completely translated from Hmong language into English language considered a Brady violation and being a Brady violation is it a deprivation of the defendant's discovery rights or any other 'Due Process' right under Sixth Amendment of the United States Constitution. The second issue is whether trial counsel provided ineffective assistance, which deprived Chang of 'Due Process' pursuant to Sixth Amendment of United States Constitution? Finally, should prior statements by Z.Y be admissible and be allowed to be used by the defense under 'Fundamental Fairness' doctrine because such statements contradict the statements taken by law enforcement and the prosecutor; as well as such statements were never truly evaluated under an evidentiary hearing and can be deemed as crucially damning to the prosecutor's case?

The first issue is in regard to the recorded evidence by law enforcement, presented to the prosecutor, and later presented to the defendant's trial attorney long after the demand for discovery was made and almost two weeks prior to trial. Furthermore, the recordings and transcripts of the recordings were not completely translated from Hmong to English and there was a lack of time for the defendant's attorney to acquire translation of all the recordings prior to the start of trial.

The postconviction transcript shows the defendant's attorney was not given the complete sets of recordings on numerous discs the prosecutor had and not all the discs were translated. The prosecutor withheld evidence as well as did not fully translate the recordings is a Brady violation as shown through case reference 'Brady v. Maryland', 373 U.S. 83; and further supported through case reference 'Smith v. Cain', 565 U.S. 73. The reference to transcript is the post-conviction transcript in which it shows attorney was not given the complete set of numerous discs or translation made available (Pg 10; lines 3-25).

It is the duty of the prosecutor to make all evidence that is not favorable as well as favorable to the defense available in a timely manner prior to trial under 'Due Process of Law' within Sixth Amendment of United States Constitution because numerous Wisconsin Statutes and the State Constitution shows this requirement to be in alignment with the United States Constitution. See case 'State v. Harris', 272 Wis.2d 80; in which disclosure of evidence was not in a reasonable amount of time. Wisconsin Court of Appeals should have acknowledged the Harris case and seen the error of the trial court as well as remedied this error because it was pivotal in the defense of Lee Chang because it essentially prevented Chang's attorney from doing the necessary work to

translate, investigate, and examine all recordings. Due to defense attorney filing a demand for discovery immediately after preliminary hearing and the arraignment stages; it is clearly a Brady violation by the prosecutor for not making all recording(s) discoverable as well as providing translation of all recordings and for not doing such in a timely manner to give the defense an equal chance to examine the evidence. Therefore, Chang also cites the 'Fundamental Fairness' doctrine and the acknowledgement of a Brady violation is pursuant to case references 'Brady v. Maryland', 373 U.S.83(1963); 'United States v. Bagley', 473 U.S.667(1985); and 'Smith v. Cain', 565 U.S.73(2012). The Brady violation is a deprivation of Chang's 'Due Process' and 'Due Process of Law' rights under Sixth Amendment of United States Constitution.

Was trial counsel ineffective and such ineffective assistance of counsel deprive Chang of fair 'Due Process' pursuant to Sixth Amendment of United States Constitution? It is Chang's belief trial counsel provided ineffective assistance of counsel pursuant to an objective standard. May the court recognize case reference 'Avila v. Richardson', 751 F.3d 534; in which the United States Court of Appeals ruled one may appeal a 'No Contest' or 'Guilty' plea on grounds of ineffective assistance of counsel due to an attorney's representation fell below an objectively reasonable standard. Even though Chang did not take a plea agreement and did in fact go to trial; trial counsel's representation fell below the objectively reasonable standard set forth. In addition, the United States Supreme Court ruled in case 'Strickland v. Washington', 466 U.S. 668; that ineffective assistance of counsel does in fact deprive any defendant their Sixth Amendment right pursuant to United States Constitution. Furthermore, case reference 'State v. Machner', 92 Wis.2d 797; and 'State v. Pitsch', 124 Wis.2d 628; sets forth the standards required in State of Wisconsin for a certain type of evidentiary hearing to determine whether trial counsel was ineffective. In addition, 'Kimmelman v. Morrison', 477 U.S. 365(1986); is a case in which the United States Supreme Court ruled trial counsel is ineffective if trial counsel did not timely file a motion or failed to file a motion on behalf of the defendant in which can be deemed as an adequate standard defense. This case set forth one stage of what is deemed as an objective standard. Therefore, may this court decide whether Chang's trial counsel met an objectively reasonable standard of representation.

Chang believes trial counsel was ineffective for not suppressing the recordings on the grounds of a Harris violation in accordance with the ruling in case 'State v. Harris', 272 Wis.2d 80; and the 'Fundamental Fairness' doctrine set forth through 'Silwinski v. Bd. of Fire and Police Comm'rs', 2006 WI App 27. Within the Harris case the prosecutor failed to give evidence in a timely manner and such evidence was favorable towards the defendant. The defendant was

able to withdraw his plea agreement and plea. The importance of receiving evidence is crucial in allowing the defense to have reasonable time to investigate, analyze, and prepare. Such is clearly recognized through all courts as shown within the 'Fundamental Fairness' doctrine as the bases for discoverable evidence and 'Due Process'. Even in Wisconsin Courts in administration type cases as shown through case reference 'Silwinski v. Bd. of Fire and Police Comm'rs', 2006 WI App 27; 'Fundamental Fairness' doctrine is discussed and seen as a federal doctrine. In conclusion, counsel erred in not immediately raising a Harris violation as well as a Brady violation due to the findings that discoverable evidence was not given in a timely manner when it could have been made discoverable at an earlier time.

Second, trial counsel was ineffective for not filing a motion for an extension of time to examine newly discoverable evidence. Filing a motion would put it clearly on record of the prosecutor presenting discoverable evidence a week or two prior to trial as well as allowing the defense to have more time to prepare in both its examination of the evidence and how to use the evidence in the best possible defense.

Third, trial counsel should have immediately hired a translator upon receiving the recording(s) in which the State made discoverable extremely close to trial and did not completely translate from Hmong language to English language.

Finally, counsel should have prepared questioning the witnesses and would have been able to do such upon further/better investigation of the recording(s) as well as interviewing people within the recording(s) such as Chang's father.

Should prior statements by Z.Y. be admissible under 'Fundamental Fairness' doctrine because they contradict statements law enforcement and prosecutor wishes to use; and such statements were never truly evaluated under an evidentiary hearing? Chang believes trial counsel failed to introduce additional evidence of prior consistent statements made by Z.Y., which could have rehabilitated her credibility as well as showing a consistent pattern of statements made by Z.Y. that rebut an expressed as well as implied charge against Chang.

The approach in which both trial and appeal counsel used in regard to introducing evidence of prior consistent statements made by Z.Y.; may have been argued wrong. Instead of arguing 'State v. Gershon', 114 Wis.2d 8; and the issue of rehabilitating one's credibility; the defense should have argued as well as from the point of Wisconsin Statutes §908.01(4)(b)(2) and from 'Fundamental Fairness' doctrine.

Wisconsin Statutes §908.01(4)(b)(2) is in regard to a statement of which the party has manifested the party's adoption or belief in its truth. Therefore, if trial and appeal counsel would have shown forth evidence or requested an evidentiary hearing to evaluate the evidence that could show the party's belief

in the truth of Z.Y.'s statements that she lied to law enforcement at trial and the injuries sustained on her arm were from a previous fight with some women and not with Lee Chang; it is substantial in showing a rebut of an expressed as well as implied charge against Chang.

'Fundamental Fairness' doctrine dictates one has the privilege as well as the opportunity to examine all evidence against themselves that may or could be used against or in favor of the defendant's defense. Therefore, counsel could have argued pursuant to the 'Fundamental Fairness' doctrine; the statements by Z.Y. could have been admitted within an evidentiary hearing to determine if the evidence of prior statements rebuts an expressed as well as implied charge. If such showed that it did rebut an implied charge then the prior statements could have been admissible upon proper examination and cross-examination opportunities by all parties.

The introduction of prior consistent statement has a variety of rules in Wisconsin Courts of when it is admissible as well as inadmissible. However, criminal courts throughout the centuries had cases in which the statement of a witness or victim is inconsistent at one point in time or another point in time. In some States when a victim or witness statement is inconsistent and probably unreliable; that person is usually deemed not credible for trial purpose and their statement(s) throughout is simply disregarded. This tends to occur within cases that involve couples who have disputes or have possible ill sought vengeance toward the other in which case one person will lie to a police officer to get the other locked up. This case seems similar in some ways. However, regardless of what way this case seems; it is important that all aspects of evidence are clearly evaluated. In this case the victim is clearly stating at trial that she lied to law enforcement and the injuries sustained were not caused by Lee Chang. Therefore, it is important to examine evidence that is presented as well as possibly valuable to both sides. In this case it seems the State has examined evidence that is favorable towards the prosecution of Lee Chang, but has not examined as well as evaluated the evidence that is in favorable light towards the defendant. In conclusion, under fundamental fairness the evidence that is favorable towards the defendant should be equally and fairly examined because the victim clearly states Lee Chang did not harm her and states this at trial. See trial transcript page ninety-seven; lines one through seven in which Z.Y. states she fell while holding Chang's hand. See trial transcript page ninety-nine; lines one through twenty-five in which the victim admits to going madly insane, become a danger to herself as well as others, and Chang was attempting to prevent her from causing harm to herself or others. In addition, there are numerous lines throughout the trial transcript in which Z.Y. admits to lying to law enforcement as well as falsely accusing Chang of crimes he did not commit. Therefore, the introduction of prior statements should have been admissible.

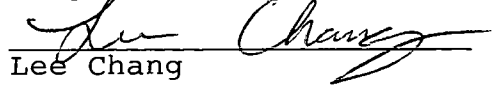
Reason For Granting Petition

The petitioner Lee Chang respectfully asks the United States Supreme Court to grant this petition due to the issues it raises, the Constitutional deprivations, and the need for prececedent(s) in regard to: objectively reasonable standards for applying towards ineffective assistance of counsel, evidence that is not timely made discoverable to the defense as well as not completely translated from Hmong language to English language, and a federal objectively reasonable standards of what should be reviewed with regard to prior statements or inconsistant statements made to law enforcement versus other statements that contradict the statements made to law enforcement; especially statements at trial should be admissable even if it is not in favor of the prosecution's prior statements of the victim. These issues need to be addressed due to the inconsistant rulings by numerous States as well as by inconsistency within Wisconsin Courts regarding all three issues.

Conclusion

The petition for a writ of certiorari should be granted. This petition has been signed under oath and mailed to all parties listed on january, 4, 2019 ;

Respectfully,


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