23-5203

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Ronald M. Carpenter — PETITIONER
(Your Name)

vs.

Wisconsin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Wisconsin Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ronald Carpenter #512872
(Your Name)

2000 Progress Rd.
(Address)

New Lisbon, WI 53950
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

THIS PETITION PRESENTS NOVEL QUESTIONS OF LAW, THE RESOLUTION OF WHICH WILL DEVELOP THE LAW AND HAVE NATIONWIDE IMPACT, WHILE ESTABLISHING A NEEDED AND DESIRABLE POLICY THAT WILL ASSIST THE COURT AND LOWER COURTS IN IDENTIFYING AND RECTIFYING WRONGFUL CONVICTIONS.

DID CARPENTER HAVE :

A FAIR TRIAL, THE RIGHT TO CONFRONT WITNESS ON PRIOR ACTS WHEN THERE'S ONLY A HE SAY SHE SAY TRIAL ON CREDIBILITY OF BOTH THE COMPLAINANT AND THE DEFENDANT?

THE RIGHT TO IN CAMERA INSPECTION OF COMPLAINANTS MENTAL HEALTH RECORDS?

THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL?

THE RIGHT TO A DEFENSE?

THE RIGHT WHETHER A COURT OF APPEALS, WHEN EXAMINING THE ISSUE OF WHETHER THE REAL CONTROVERSY WAS TRIED IN A CRIMINAL CASE?

THE RIGHT SHOULD LOWER COURTS BE REQUIRED TO CONSIDER LEGAL ERRORS MADE IN PRIOR PROCEEDINGS, BEFORE RELYING ON PRIOR PROCEEDINGS TO DEEM THE ISSUE FORECLOSED?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Pennsylvania v. Ritchie, 480 U.S. 39 107 S. Ct 989 94 L. (1987)
State v. Shiffra, 175 Wis. 2d 600, 499 N.W. 2d (1993)
Holmes v. South Carolina, 547 U.S. 319, (2006)
State v. Johnson, 407 Wis. 2d 195 WI (2023)
State v. Chambers, 252 N.J. 561 288 (2023)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was Oct. 25, 2022
A copy of that decision appears at Appendix B.

[ ] A timely petition for rehearing was thereafter denied on the following date: Feb. 21, 2023, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including July 21, 2023 (date) on April 13, 2023 (date) in Application No. 22A899.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) Right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. U.S.C.A. Const.Amend. 14.

2) Defendants have a constitutional right to present a defense. U.S. Const. Amends. 5, 6, 14.

3) The constitutional rights of a defendant, contemplated by the exception to the evidence rule generally excluding admission of evidence offered to prove that a victim of sexual misconduct engaged in other sexual behavior, include a defendant's rights under the Sixth Amendment to confront witnesses and to have a meaningful opportunity to present a complete defense. U.S.C.A. Const.Amend. 6; Fed.Rules Evid.Rule 412(b)(1)(C), 28 U.S.C.A.

4) The Sixth Amendment right to confront witnesses includes impeaching the credibility of a prosecution witness by cross-examination. U.S.C.A. Const.Amend. 6.

5) Sixth Amendment right to counsel includes the right to the effective assistance of counsel. U.S. Const. Amend. 6.

6) Wisconsin supreme court may grant a new trial in the interest of justice whenever the real controversy has not been fully tried such as when the jury was erroneously denied the opportunity to hear important evidence bearing on an important issue in the case or when the jury had before it evidence not properly admitted that so clouded a crucial issue that it may be fairly said that the real controversy was not tried. W.S.A. 751.06.

STATEMENT OF THE CASE

On April 24, 2008, the defendant-petitioner, Ronald Marion Carpenter, was found guilty, following a four-day jury trial, of kidnapping, false imprisonment, four counts of second-degree sexual assault by use of force, and four counts of 1st degree sexual assault. (R57). On August 26, 20008, he was sentenced to 59 years of initial confinement, followed by 24 years of extended supervision. (R201-1-78). On direct appeal, Carpenter argued that his constitutional right to a public trial was violated. On April 13, 2011, the court of appeals denied his claim and affirmed the judgement. (R123). On September 12, 2011, his petition for review was denied (R125).

On October 13, 2011, Carpenter filed a pro se motion for postconviction relief pursuant to section 974.06 Wis. Stats. (R127). On October 19, 2011, the circuit court denied the motion. (R128). On January 18, 2013, Carpenter filed a Knight petition the court of appeals denied.(R135).

On July 14, 2017, Carpenter filed a motion seeking sentence modification. (R142). On July 31, 2017, however, for reconsideration, (R145; R146). A Pro se motion for an evidentiary hearing followed, (R147), which was also immediately denied. (R148). On December 18, 2018, the court of appeals again affirmed the circuit court's denials of postconviction relief. (R161;R162).

On May 11, 2020, Carpenter filed the motion that forms the basis for this petition. (R180). The "motion" consisted of a letter and documents seeking postconviction relief based on what was positioned, in part, as newly-discovered evidence. (Id.) On May 12, 2020, the circuit court denied Carpenter's motion. (R181). On June 15, 2020, Carpenter filed a pro se motion for reconsideration, (R182), which was also denied. (R183). Carpenter then was able to retain counsel and appealed. (R184). On October 25, 2022, the court of appeals affirmed, (App. A), then on ? the Wisconsin supreme court affirmed conviction and it is that decision that needs to be considered for Nation Wide impact for fair trials that needs to be protected for the falsely accused sexual assault persons, which this case can be the case, for a (safety net), to help lower courts guarantee fair trials for individuals that been denied a fair trial, where all the controversy is not hidden from the accused and the jury.

The facts most germane to this petition, given the circuit court's summary disposition of Carpenter's motion, and the resultant issue now presented for the Court's review, can first be found in the Milwaukee Police Department Incident Report that Carpenter attached to his letter motion.(R180-2). The report states:

This report is dictated by Det. Gregory Jackson, assigned to the Sensitive Crimes Division,

Day Shift. On Thursday, October 18, 2007, at approximately 10:30 a.m., I, Det. Greg Jackson, had occasion to assist Police Officers Deborah Kranz and Joyce Johnson with an investigation involving NV. After being advised of the investigation, I had occasion to speak with the victim's mother, Carolyn Browning - F/W, DOB 9/6/69 of 9468 Fenwick Lane, New Haven, Indiana, phone # 260-410-7990. I spoke with Carolyn Browning by phone. Ms. Browning indicated to me
that she had received a call from her daughter a couple of days ago telling her that she was sexually assaulted by three individuals. At this point of the conversation, Ms. Browning said that she wanted to be frank with me. Ms. Browning indicated that her daughter is full of shit. Ms. Browning indicated that her daughter has been trouble from day one. Ms. Browning indicated that her daughter has had a troubled teen life while growing up in Maryland and in Indiana. Mrs. Browning indicated that her daughter has accused several family members of sexually assaulted her and they all have been discovered to be baseless. Ms. Browning indicated that she felt that her daughter is only making this story up because she screwed up her relationship with her current boyfriend.
(Id).

The other facts germane to this motion are found in the handwritten notes of trial counsel which apparently were not discovered until 2017, by Carpenter's then appointed federal habeas corpus counsel. (See Carpenter's Brief-in-Chief). These notes reference a 2002 psychological evaluation report on the victim that was never introduced into evidence or, more egregiously, turned over to the court for an in camera review, pursuant to Shiffra. (R180-3). This evaluation disclosed that the victim alleged prior false allegations of sexual assault that were subsequently reported to Child protective Services which investigated and found them to be false. (Id). Moreover, it reported the victim was likely bipolar, had threatened to bring a gun to school, extorted someone at her school for money, threw her baby across the room, started counseling at the age of 13, liked to victimize others, was put on probation and refused to attend drug treatment. (Id.). She also made unsubstantiated allegations that she was kidnapped by a man who took her to a basement where three men took turns raping her and restrained her from leaving. (Id). As already noted. there were numerous other false allegations of sexual assault against a variety of other individuals.

None of these facts came out during Carpenter's trial. On the first day of trial, the circuit court addressed the State's motion in limine seeking to bar Carpenter from introducing any prior alleged false allegations of sexual assault on the part of the victim. (R193-15-21). The State argued that the statement Ms. Browning made to the police should not be admissible as evidence on the grounds it was hearsay under Wis. Stats section 908.01(3). Defense counsel argued only that the statement was admissible hearsay because it came from the victim's own mother. (Id.).

The trial court ruled the police report inadmissible hearsay and prohibited Carpenter from using it to cross-examine the detective who authored the report. Nor was Carpenter allowed to introduce the report into evidence. The trial court further prohibited Carpenter

from questioning the victim as to whether she had ever made prior false allegations of being sexually assaulted, because counsel was not able to show the allegations were false, as the victim's mother was not produced to testify. Consequently, Carpenter's jury never heard that the complainant had a long history of making false allegations of sexual assault.

arguments:

This petition demonstrates a need for The United States Supreme Court to consider establishing, implementing or changing a policy for all States within its authority. Like Section 809.92(1r)(b)Wisconsin Stats. The petitioner Carpenter stands convicted of serious sex crimes, for which he received a 59-year sentence, on the basis of testimony from a complainant who:

(1) basely accused several family members of having sexally assaulted her;

(2) wrongfully accused her mother's best friend of sexually assaulting her;

(3) alleged her husband, brother uncle and grandfather sexually assaulted her, allegations that were all investigated and determined to be baseless;

(4) reported being raped by a street gang in Chicago, which was also determined to be baseless;

(5) accused a black male in indiana of raping her, yet another claim investigated and determined to be baseless;

(6) likely fabricated the allegations against Carpenter because she had ruined her relationship with her then boyfriend;

(7) made false allegations of sexual assault that were reported to Child Protective Service and investigated and found to be false;

(8) falsely claimed she was kidnapped and taken to a basement where three men took turns rapping her and restrained her from leaving; and

(9) had been in counseling since age 13, and possibly diagnosed as bipolar, threatened to bring a gun to school, liked to victimize others, extorted a schoolmate for money, threw her baby across a room and was put on probation but refused to attend drug treatment.

Carpenter's jury did not have any of this information when it deliberated and found him guilty, from which it can logically be inferred that it found the complainant to be credible. It is in this significant respect that the real controversy in Carpenter's case was not tried.

It is not that this information was non-existent or unknown at the time of Carpenter's trial. On the contrary, trial counsel had all of this information, much of it contained in police reports, and much of it originating with the complainant's own mother. The problem is that trial counsel did nothing with this deep well of information. trial counsel did not move for an in camera review of the complainant's psychological records despite knowing there was a psychological evaluation of the complainant roughly five years before the allegations that gave rise to this case. *State v. Shiffra,* 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993).

Nor did counsel take any steps to secure the admissibility of some or all of the prior false accusations of sexual assault so they could be presented to Carpenter's jury. Indeed, so oblivious was defense counsel that the only reason the issue ever came to trial, to bar Carpenter from introducing any of this damning evidence, which cause an 14th Amendment violation of the right to a fair trial. Since defense counsel had done nothing to secure this evidence, defense counsel was in no position to prove any of it in trial, and the trial court had little choice but to grant the State's motion.

Adding insult to injury, Carpenter's post-conviction and appellate counsel ignored this travesty of justice altogether. Instead, on direct appeal, Carpenter only argued that he had been denied his right to a public trial because minors had been excluded from the courtroom. It should be noted that before appointment of post-conviction counsel, Carpenter, pro se, attempted to raise the issue himself. This is notable given this Court's observation that when evaluating the comparative strength of claims that were raised and those which were not, reviewing courts should consider any preferences the defendant conveyed to his attorney. *State v. Romero-Georgana,* 2014 WI 83, ¶ 4, 360 Wis. 2d 522, 849 N.W. 2d (668, 2014). A claim's strength may be bolstered if a defendant directed his attorney to pursue it. Id.

Carpenter was therefore abandoned to raise the issue himself, in a pro se motion pursuant to section 974.06, Stats. (R127). Left to his own *pro se* devices, it did not go well Less than one week later the circuit court denied the motion without a hearing. (R128) Among other things, Carpenter had asked the circuit court to produce all the records his trial counsel failed to obtain, to which the trial court responded that it was "not a private detective agency." (R128). This was an inauspicious start to the circuit court's consideration of the *pro se* motion, who judge Rebecca L. Dallet at that time said that ruling to Carpenter's motion, who is now a justice in the Wisconsin supreme court.

Regarding the *Shiffra* claim, the court then concluded that Carpenter had failed to meet his burden of showing a reasonable likelihood that the victim's mental health records contained relevant information to support his claims. (Id.), citing *State v. Green,* 2002 WI 68, 253 Wis. 2d 356, 646 N.W. 2d 298.
The lower circuit court went on:

"The Allegations in the defendant's motion are completely conclusory and based entirely on the hearsay contained in the police report labeled Exhibit A in his motion. They lack factual support and are totally insufficient to establish that trial counsel was ineffective."

(R128-2-3). Here, and again, the real controversy was left unaddressed.

The circuit court placed an erroneous burden on Carpenter. Carpenter did not need to show a "reasonable likelihood" the complainant's mental records contained information to support his claims. Instead, Carpenter only had the relatively low burden of making a preliminary showing that the sought-after evidence was relevant, and could have been helpful to the defense, or was necessary to a fair determination of guilt or innocence. *Shiffra*, 175 Wis. 2d at 608; *Green*, supra at ¶¶34-35 (standard not intended to be unduly high and since defendant will often be unable to determine the specific information in the records, in a close call, court should generally provide *in camer*a review).

Nor were the facts referenced in Carpenter's motion, as circuit court characterized them, "completely conclusory" or so lacking in factual support as to be "totally insufficient." To the contrary, the information came directly from the police investigation of his alege crimes. And much of the information did not come from some unreliable third party, but instead, from the complainant's own mother. Contrary to the section Wis. Stats. 974.06 circuit court's reasoning, the sources and quantity of the information made the chances for an *in camera* inspection quite strong. By applying the wrong legal standard, Carpenter's motion was given short shrift.

This brings us to the motion which inaugurated the current proceedings, and from which Carpenter now seeks approval for a granted petition for writ of certiorari by The Court. In this proceeding, the flawed (and pro se) 974.06 proceeding has been leveraged as a quasi-bar to any real consideration of, or relief from, Carpenter's plight. Because Carpenter did not obtain any relief in his section 974.06 proceeding, the court of appeals construed his current motion as merely relitigating a claim already decided, even though that claim was wrongly decided in the first instance.

This Petition posits that when an appellate court is asked to decide whether the real controversy has been tried, it should be required, as a matter of law, to consider the propriety of any previous post-conviction attempts to rectify the claim at issue. Put another way, such an inquiry should also include whether the real legal issue has been "tried" (i.e., addressed). In this case, the real legal issue is ineffective assistance of trial counsel, and it has never been properly addressed. Moreover, the improper treatment of that issue was then used to effectively bar Carpenter from any serious consideration of whether the real controversy was tried in his case.

By deepening the analysis of whether the real controversy has been tried, the legal

standard Carpenter urges this Court to adopt would protect deserving defendants from the kind of shallow consideration he was given under his extraordinary circumstances. It would provide a reasonable safety net for wrongfully convicted defendants who, through a confluence of ineffective assistance of counsel and pro se abandonment, are denied meaningful review of serious legal errors. Finally, it would also develop the law by resolving a novel legal issue with nationwide application.

Carpenter's case is the future for cases like his for logical higher analytical degree of law to its highest, when the wrongfully convicted did not have the fundamental fairness of a fair trial. Under the magnitude of procedural errors by lower court judges and all parties, Carpenter's constitutional rights were obliviated. It's going to take the Court to set the law and make a safety net for the wrongfully convicted, to help keep a large magnitude of individuals from bars of hurdles that the lower courts caused.

Carpenter was prejudicially deprived of compelling exculpatory evidence during his trial, due to deficient performance of counsel, and then left to fix the issue pro se, with a section Wis. stats. 974.06 motion, which was erroneously denied under improper legal standards, an error which should have been considered controversy had not been tried, but instead was used to summarily deny him relief.

In his brief-in-chief, Carpenter noted his trial counsel was ineffective for failing to advance a number of arguments to get the victim's mother's statements to the police into evidence. Carpenter advanced three arguments. First, counsel reports, court records, or sworn affidavits from alleged perpetrators against whom the victim made prior false sexual assault claims that were determined to be baseless. Second, counsel could have argued that although the victim's mother's statement made to the police were hearsay, they were nevertheless admissible under the hearsay exception rule. Wis. stats. section 908.04(1)(e) and 908.045(6).

Third, counsel could have used the considerable evidence suggesting the victim had documented psychological problems that could affect her ability to perceive and relate the truth to secure an *in camera* examination of her psychological records. Shiffra, supra. With such considerable information, the chances for *in camera inspection* were good, especially given the relatively low burden of making a preliminary showing that the sought-after evidence is relevant and may be helpful to the defense, or is necessary to a fair determination of guilt or innocence. *Shiffra*, 175 Wis. 2d at 608; Green, 2002 WI 68, at ¶¶ 34-35 (standard not intended to be unduly high and since defendant will often be unable to determine the specific information in the records, in a close call the lower courts should generally provide an *in camera review)*. Had the trial court ordered an *in camera*, the victim would have been called on to either consent to judicial review of her psychological records, or be barred from testifying. *Shiffra*, 175 Wis. 2d at 612.

Note: Some have questioned whether *Shiffra is* still good law following Error! Main

Document Only. *State v. Lynch,* 2016 WI 66, 371 Wis. 2d 1, 885 N.W.2d 89. In Lynch, however, Wisconsin supreme court was divided and noted the law therefore remained as the appellate court had articulated it in Error! Main Document Only. *State v. Lynch,* 2015 WI App 2,¶ 44, 359 Wis. 2d 482, 859 N.W.2d 125 ("Error Main Document Only. unless [the victim] consented to an *in camera inspection* of those records, she would not be permitted to testify at the trial").

On May 12, 2020, the circuit court issued a decision and order denying Carpenter's request for postconviction relief:

On May 11, 2020, the defendant filed a pro se request asking the court to examine documents attached to his letter for relief based on "newly discovered evidence. " The circuit court has reviewed the defendant's letter and attachments and finds that he has not set forth a viable claim for postconviction relief based on newly discovered evidence. See *Simon v. Slate,* 53 Wis. 2d 493, 499 (1972) ("Discovery of new evidence which merely impeaches the credibility of a witness is not a basis for a new trial on that ground alone."). Therefore, the defendant's request for relief on these grounds is denied.

(R181). As can be seen, this decision did not address the real substance of Carpenter's motion. Also judge Dallet did not see this new evidence when she ruled on Carpenter's motion.

On appeal, Carpenter invoked the discretionary power of the court of appeals to order a new trial in the interests of justice. Carpenter also noted an appellate court may exercise its discretionary reversal powers under Wis. stats. section 752.35, which is provided in the relevant part:

Discretionary Reversal. In an appeal to the court of appeals, if it appears from the record that the real controversy has not been fully tried, or that it is probably that justice has for any reason miscarried, the court may reverse the judgement or order appealed from regardless of whether the proper motion or objection appears in the record and may direct the proper judgment or remit the case to the tried court for entry of the proper judgement or for a new trial, and direct the making of such amendments in the pleadings and the adoption of such procedures in that court not inconsistent with statutes or rules necessary to accomplish the ends of justice.

See also *State v. Henley,* 2020 WI 97 at ¶ 63. When critical, relevant and material evidence relates to the credibility of a key witness, the jury must be afforded the opportunity to hear and evaluate it, or at least not be presented with evidence on a facts, so that justice can prevail, and the real controversy be fully tried. *State v. Hicks,* 202 Wis. 2d 150, 160, 549 N.W. 2d 435 (1996); *State v. Jeffrey A.W.,* 2010 WI App. 29, ¶ 1, 323 Wis. 2d 541, 780 N.W. 231.

Moreover, with respect to evidentiary matters, courts have concluded the real controversy has not been fully tried when the jury was erroneously deprived of important testimony that bore on an important issue of the case. See *State v. Burns*, 2011 WI 22 ¶ 45, 332 Wis. 2d 730, 798 N.W. 2d 166. The erroneous denial of relevant evidence refers to legal evidentiary error by the lower courts. It is within the discretion of the higher courts of that state to grant a new trial if the real controversy has not been tried. Wis. Stat. 752.35 gives the higher court the ability to conduct an independent review of the record. See *State v. Williams*, 2006 WI App. 212, ¶¶ 13-17, 296 Wis.2d 834, 723 N.W.2d 719. Moreover, discretionary reversals because the real controversy has not been fully tried have been granted for a variety of reasons, including the erroneous admission or exclusion of evidence which consequently thwarted justice. Williams at ¶ 36.

Carpenter took issue with the circuit court's reasoning that newly-discovered evidence which merely impeaches the credibility of a witness is not the basis for a new trial on that ground alone. (R181), citing *Simos v. State*, 53 Wis. 2d 493, 192 N.W. 2d 877 (1972). Carpenter pointed out that subsequent cases in Wisconsin undercut that reasoning. For example, in *State v. Davis*, 2011 WI App. 147, ¶ 18, 337 Wis. 2d 688, 808 N.W.2d 130 (Ct. App. 2011), Wisconsin supreme court disagreed with the State's contention that "testimony [that] simply impeaches [a witness]... is sufficient to warrant a new trial."

Carpenter also noted, citing *State v. Plude*, 2008 WI 58, 310 Wis. 2d 28, 750 N.W.2d 42, that newly-discovered impeaching evidence may, under certain circumstances, warrant a new trial:

Wisconsin law has long held that impeaching evidence may be enough to warrant a new trial. In commenting on the discovery that a trial witness could read and write English after he testified to the contrary, they stated: It may well be that newly discovered evidence impeaching in character might be produced so strong as to constitute ground for a new trial; as for example where it is shown that the verdict in based on perjured evidence.

Plude at ¶ 47 (citations and quotations omitted; emphasis in original).

It should be noted that *Plude* held the defendant entitled to a new trial based on newly-discovered evidence that the State's expert had lied about his credentials. More specifically, the State expert falsely claimed he was a clinical professor at Temple University. Id. at ¶ 30. If newly-discovered evidence to impeach an expert about his credentials was sufficient to warrant a new trial, the ability to impeach a complainant about her prior false allegations of sexual assault certainly satisfies the standard. Indeed, because a conviction obtained by the use of perjured testimony violates a defendant's due process rights, said conviction should be set aside if defendant shows "any reasonable likelihood that the false testimony could have affected the jury's verdict." *People v. Mitchell*, 972 N.E.2d 1153, 1165 (Ill. App. 2012).

In *Plude*, Wisconsin supreme court held there was a reasonable probability that, if the jury discovered the expert lied about his credentials, it would have had a reasonable doubt as to Plude's guilt. Carpenter has drawn the obvious parallel: there is a reasonable probability that had his jury heard about the victim's multiple lies about being sexually assaulted, it would have had a reasonable doubt as to his guilt.

In any event, the court of appeals summarily disposed of Carpenter's appeal, Based on his prior litigation of the issue the appellate court stated:

Carpenter attempts to recharacterize his newly discovered evidence claim by asserting that he is entitled to a new trial in the interest of justice because the jury did not hear testimony that the victim had history of making sexual assault allegations that were investigated and determined to be baseless. He contends that trial counsel's ineffectiveness kept the real controversy from being fully tried. We adopt the circuit court's decision denying Carpenters' reconsideration motion, and conclude that despite the interest-of-justice label, Carpenter is simply relitigating his ineffective assistance claim. Carpenter cannot simply recharacterize previous ineffective counsel claims in a neverending series of attempts to obtain a new trial. Our discretionary reversal power under Wis. Stat. 752.35 is to be exercise only in exceptional cases. This is not one.

(Appendix A, p. 4). Carpenter posits that in fact, his is just such an exceptional case.

In examining the prior litigation that caused the appellate court to view Carpenter as simply repackaging a prior ineffective assistance of counsel claim, there appears to be only one prior circuit court proceeding where that claim was raised. It was not raised during his direct appeal. Nor was it raised in his request for sentence modification. The crux of this reasoning seems to come from the following proceeding, as noted by the court of appeals:

Next, Carpenter, *pro se*, filed a Wis. Stat. 974.06 motion for a new trial alleging that his postconviction counsel was ineffective for not arguing that his trial counsel was ineffective. Carpenter said trial counsel was ineffective for not investigating and impeaching the victim with prior untruthful allegations of sexual assault, which were detailed in a statement the victim's mother made to police, and for not securing the victim's mental health records. The court denied Carpenter's motion, and he did not appeal the decision; because as the Court sees all Carpenter's attempts to litigate *pro se* has failed, why? when errors are made by lower courts they don't like to fix them because of the politics of what's going on in today's society, like the "me to movement", or judges running campaigns that's saying they are "tough on crimes", to get a sit in a higher court but failing to use the law to correct wrongful convictions once its shown because of justice Dallets bias and politics, that impacted Carpenter case for a fair ruling of the errors that was made in trial, and Carpenter wanted to save his state pay, working as a barber in prison or any job in prison to get a paid counsel, and Carpenter did not recognize the errors the circuit court had made in denying his motion, because he never study law, he did not have the years of a lawyer would have

to finish school to become effective, therefore Carpenter was ineffective to recognize these critical errors the circuit court made, does that mean Carpenter have to die in prison for being ignorant to the law, if so Carpenter humbly asks for mercy to the Court and request to please don't let his ignorance of the law cost him his life dying in prison.

As previously noted, the circuit court erroneously burdened Carpenter with showing a "reasonable likelihood" that the victim's mental health records contained information to support his claims. in fact, Carpenter only needed to make a preliminary showing that the records were relevant, and could have been helpful to his defense, or were necessary to a fair determination of his guilt or innocence. *Shiffra*, 175 Wis. 2d at 608. The standard was not intended to be unduly high. *Green*, supra at ¶¶34-35. Wisconsin courts have noted that since defendants will often be unable to determine the specific information in records, where there is close call, circuit courts should generally provide the requested in camera review. id.

Also when the trial court responded that it was "not a private detective agency." (R128). This was an inauspicious start to the circuit court's consideration of the *pro se* motion, who judge Rebecca L. Dallet at that time said that ruling to Carpenter's motion, who is now a justice in the Wisconsin supreme court.

In a matter of law, from the time the oath of office is taken judges at all levels are bound to conduct themselves in an ethical manner and to adhere to a code of judicial conduct. A model code of judicial conduct was adopted by the American Bar Association in 1972 and was Amended in 2010; In a matter of law, a judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

When judge Dallet said it was "not a private detective agency," she clearly showed bias, partiality, impropriety, and the appearance of impropriety, which she went against her oath when she ruled on Carpenter's motion, which kept his case from being corrected.

Now when bias is clearly shown, what can be done, and now Dallet is a Wisconsin justice, only the Court can correct the wrong because as the Court sees Wisconsin is not going to correct the violations of Carpenter's civil right to a fair trial and the rest of his violated civil rights.

REASONS FOR GRANTING THE PETITION

When wrongful convictions are not corrected or resolved, mass incarceration stays absolute. Carpenter prays to God that the Court not only solve his problem, but also solve the problems of others who been wrongfully convicted of sexual assault cases like his across our nation; because who going to fix this problem when the lower courts refuse to do so, which leaves only the Court can solve this problem by granting this petition. To not solve this problem only enhances others to weaponize false rape charges on individuals who are innocent, making more mass incarceration. Now since Carpenter has been in prison he cried, he suffered, he lost everything and he lost loved ones. In all this strife now his health is now deteriorating from the prison giving him bad medication for acid reflux for over ten years that now has him taking medication for his kidneys. The unduly plethora harsh sentence Carpenter is serving from this wrongful conviction, if not fixed by the Court means Carpenter will die in prison of a crime that he did not do,(a death sentence). Now the Court on the other hand can put a law in place, to make it mandatory for all individuals who are mentally ill, who accuses others of rape, to have their mental health record *in camera* inspected for a fair trial, so it can help keep wrongful convictions of ever occurring.

Further there is a conflict in Wisconsin whether *Shiffra* is a good law or not that divides the highest court of that state, see *State v. Johnson*, 407 Wis. 2d 195 WI 39 990 N.W. 2d 174 (2023), which only the Court can settle this dispute with granting this petition. In Johnson See Requisite special justification for Wisconsin supreme court's overruling of its precedent exists when (1) law has changed in way that undermines prior decision rationale, (2) there is need to make decision correspond to newly ascertained facts, (3) precedent has become detrimental to coherence and consistency in law, (4) decision is unsound in principle, or (5) it is unworkable in practice. Privileged Communications and Confidentiality Display Key Number Topics *In camera* review *State v. Shiffra*, 499 N.W.2d 719, which created process by which criminal defendant could obtain limited, *in camera* review by court of victim's privately held, otherwise privileged health records, would be overruled, and other cases that applied *Shiffra*, e.g., *State v. Green*, 646 N.W.2d 298, *State v. Rizzo*, 640 N.W.2d 93, *State v. Solberg*, 564 N.W.2d 775, *State v. Behnke*, 553 N.W.2d 265, State v. S.H., 465 N.W.2d 238, and *Rock County. Dep't of Soc. Servs. v. DeLeu*, 422 N.W.2d 142, would be overruled to extent they could be read to permit *in camera review* of privately held, privileged health records in criminal case upon showing of materiality. Wis. Const. Art. 1, § 9m; Wis. Stats § 905.04(2). and also there is another conflict with *Johnson* and *State v. Chambers*, 252 N.J. 561 288 A.3d 12 (2023). Justice Dallet concurred in the overturning of *Shiffra* in the *Johnson* case.

Now because of this overturn ruling of *Shiffra* in the *Johnson* case, made it legal for a mental ill person to weaponize falsely accusing individuals of rape, taking away a defense to have in trials, when it's only a he she say challenges of credibility; which this is guaranteed to have a mass of wrongful convicted individuals in Wisconsin and across our nation to prison, only the Court can

settle this dispute. *Johnson* is also in conflict with the Court, See *Pennsylvania v. Ritchie*, 480 U.S. 39 107 S. Ct 989 94 L. Ed. 2d 40 (1987), which Wisconsin supreme court in *Johnson* made a conflict between *Ritchie* and *United States v. Hach*, 162 F. 3d 937, 947 (7th Cir. 1998), and a conflict between *Ritchie* and *Holmes v. South Carolina*, 547 U.S. 319, 324-28, 126 S. Ct 1727, 164 L. Ed 2d 503 (2006) it says Moreover, the United States Supreme Court has never held that the right to present a complete defense applies before trial. Instead, the Court has said the right applies when, for example, state evidentiary rules arbitrarily exclude a defendant from introducing evidence at trial without a legitimate purpose for doing so. See *Holmes v. South Carolina*, 547 U.S. 319, 324-28, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006) ("This right is abridged by evidence rules that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve." (internal alterations and quotation marks omitted)). *Shiffra* did not explain how the right to present a complete defense could be implicated by a pretrial discovery motion seeking *in camera* review of a victim's privately held, privileged health records. Carpenter asks the Court to grant this petition and make his case the controlling case on this issue also so it can be remanded back to the lower courts with instructions for a new trial and an *in camera* inspection of the complainant's mental health record because as the Court sees in the *Johnson case* that Wisconsin is going to use that case to block Carpenter to get a *in camera inspection* of the complainants mental health records, because Carpenter's case is truly a credibility contest of both him and the complainant which Carpenter have the right to a defense.

"Should lower courts be required to consider legal errors made in prior proceedings, before relying on prior proceedings to deem the issue foreclosed?"; Is a question that was never asked or addressed by the Court or lower courts is why this petition should be granted, because this question is such a complex question, that only can bring the greatest of the greatest minds of law together, to handle such a novel question of law, that would make it first impression new law, which is the Court, in this matter to handle this task, because can no lower court handle this question of law that would make nationwide impact. The Wisconsin supreme court failed to respond to that question when they denied Carpenter's petition for review.

Carpenter also pray the Court grant petition and remand back so the real controversy can be tried to the jury of the complainants priors falsely accuses others of sexual assaults, which will satisfy Carpenter's sixth amendment rights to a fair trial and the right to have a defense, because if lower courts are allowed to keep fixing trials where a defendant have no avenues of any type of defense during trial is an abomination to that person's sixth amendment right to a defense and fourteenth amendment right to due process, and right to a fair trial. (1) The first class of cases falls squarely in the statutory "fully tried" category: There may be a discretionary reversal whenever the real controversy has not been fully tried. The real controversy is not fully tried generally because the fact finder did not hear all the relevant evidence which was the jury in Carpenters' case. When a case falls within this class, the Court may reverse even though the Court cannot conclude that a probability exists that the defendant would not be found guilty in a new trial. *State v. Cuyler*, 110 Wis.2d 133, 142, 327 N.W.2d 662 (1983) (evidence erroneously excluded); *Logan v. State*, 43 Wis.2d 128, 137, 168 N.W.2d 171 (1969) (counsel's failure to place highly relevant testimony into evidence).

(2) The second class of cases falls squarely within the statutory miscarriage of justice category: There may be a discretionary reversal whenever it is probable that justice for any reason has miscarried. For such a probability to exist in this class of cases, it must appear that the defendant would be found not guilty in a new trial and that justice demands the defendant be given another trial. In other words, "a new trial in the interest of justice will be granted only if there has been an apparent miscarriage of justice and it appears that a retrial under optimum circumstances will produce a different result." *Jones v. State*, 70 Wis.2d 41, 56, 233 N.W.2d 430 (1975). See also *State v. Ruiz*, 118 Wis.2d 177, 200, 347 N.W.2d 352 (1984); *Haskins v. State*, 97 Wis.2d 408, 425, 294 N.W.2d 25 (1980); *Frankovis v. State*, 94 Wis.2d 141, 152, 287 N.W.2d 791 (1980); *747 *Rogers v. State*, 93 Wis.2d 682, 694, 287 N.W.2d 774 (1980); *Boyer v. State*, 91 Wis.2d 647, 674, 284 N.W.2d 30 (1979); *Hoppe v. State*, 74 Wis.2d 107, 122, 246 N.W.2d 122 (1976); *Lock v. State*, 31 Wis.2d 110, 118, 142 N.W.2d 183 (1966).

(3) A third class of cases sometimes discusses discretionary reversal in "miscarriage of justice" language and other times in "real controversy not fully tried" language, and other times uses the statutory language of both categories as well as the phrase "in the interest of justice." In cases falling in this class, the circumstances of the case justify the court's exercising its discretionary power to reverse even when the court cannot conclude that the outcome would be different on a retrial. Also there is no U.S. Supreme Court controlling case for "whether the real controversy was not fully tried." Carpenter would like to ask the Court to make his case the first controlling case "whether the real controversy was fully tried or not," Carpenter is sure it would be good law for the public, for future cases like his, because it need to be a controlling case for this novel question of law in the Court and new law for the other issues that Carpenter raised.

These are the reasons to grant this petition, Carpenter case is an exceptional case that hits all current and new legal issues that happens in cases like his, that will make nationwide impact for the falsely accuse, wrongfully convicted individuals that are all alone fighting this battle for freedom.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

Ronald Carpenter

Date: July 7, 2023