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ORIGINAL

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
JUL 02 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

HOWARD D. DAVIS,

Petitioner,

V.

WARDEN MICHAEL MEISNER,

Respondent,

On petition for writ CERTIORARI to

Seventh Circuit Court Of Appeals

PETITIONER FOR CERTIORARI

HOWARD D. DAVIS

FOX LAKE CORRECTIONAL INST.

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PRO'SE

QUESTIONS PRESENTED FOR REVIEW

1. Was Davis denied a fair trial when trial counsel failed to present the Alibi defense? Was post-conviction counsel ineffective for failing to adequately argue the alibi claim during direct appeal? And did Davis make a substantial showing of this constitutional claim that warranted C.O.A?
2. Was Davis denied effective assistance of counsel when trial counsel failed to conduct any investigation prior to trial? Was post-conviction counsel ineffective for failing to allege failure to investigate in the original post-conviction motion? And did Davis make a substantial showing of this constitutional claim that warranted C.O.A?
3. Was Davis denied effective assistance of counsel when post conviction counsel failed to allege in the initial postconviction motion the trial court abuse of discretion when it provided evidence to the jury, during deliberation, without Davis's knowledge and without taking precautions? And did Davis make a substantial showing of this constitutional claim that warranted C.O.A?
4. Was Davis denied effective assistance of counsel when post conviction counsel failed to adequately argue the jury misconduct claim during the initial \$974.02 postconviction motion? And did Davis make a substantial showing of this constitutional claim that warranted C.O.A?
5. Did the Seventh circuit court of appeal departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the lower court, as to call for an exercise of this court supervisory power

LIST OF PARTIES IN COURT BELOW

Howard D. Davis is currently incarcerated at Fox Lake Correctional Institution. *STATE V DAVIS*, (14CF003716), Milwaukee County Circuit Court., presiding Judge Jeffrey Wagner, Branch.38
WARDEN MICHAEL MEISNER, Respondent.

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Powers v Pollard, no. 10-c-1127, 2011 WL 5900775 at *2 ED. Wis Nov 23, 2011. p 25

Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct 2052, 2063, 80 L. Ed. 2d 674, 692-693 (1985) p3, 5, 13,

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U.S. v. Cronic, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 821 (1985). p8,

State v. Balliet, 2011 WI 79, ¶¶24, 70, 336 Wis. 2d 358, 805 N.W.2d 334. p, 6, 12

Lee v. United States, 343 U.S. 747, 757, 72 S.Ct. 967, 973, 96 L.Ed. 1270 (1952). p11

State v. Brown, 2003 WI App 34, ¶14. p11, ?

Lopez v Schriro, 491 F. 3d 1029, 1043 (9th Cir 2007) p12, 14,

Prihoda v. McCaughry, 910 F. 2d 1379, p12,

Richardson v Lemke, 745 F. 2d 258, 266 & n.3 (7th cir); id at 275 p19,

Hank v Zenk, 692 F.3d 793:2012 U.S app at 15 p22

U.S. v. Remmer, 347 U.S at 229 p17, 22

State v. Eison, 194 Wis. 2d 160, 172, 533 N.W.2d 738 (1995) p17

United States v Berry, 92 F. 3d 597 p17,

Manke v Physicians Insurance Company, 2006 WI app 50, 289 Wis 2d 75, 712 N.W. 2d 40. p22,

Hatung v. Hartung, 102 Wis 2d 58, 66, 306 N.W. 2d 16 (1981) p23

Howard v Duersten, 81 Wis 2d 301, 305, 260 N.W. 2d 274 (1977) p23

STATUTES AND RULES

Wis. Stat. §974.06(4) - Post-conviction procedural guidelines

Wis. Stat. §906.06(2)

Wis. Stat. §974.02.

OPINION BELOW

For cases from State to federal Court:

The opinion of the United States Court of Appeals appears at Appendix A. Timely filed rehearing and is reported at, Howard D. Davis, v. Michael Meisner, No. 23-2745, decided April 10 2026.

The opinion of the United States Court of appeals appears at Appendix B to the petition for C.O.A and is reported at case No. 23-2745 decided March, 06th, 2026.

The opinion of the United State District court appears at Appendix C to the petition for 2254 (Reconsideration) and is reported at case no 21-cv-1454-jps, decided 8/07/2023, is unpublished.

The opinion of the United State District court appears at Appendix D to the petition for 2254 habeas and is reported at case no 21-cv-1454-jps , decided May, 09th, 2023, is unpublished.

For cases from state court:

The opinion of the highest state court to review the merits appears at Appendix E to the petition FOR PETITION FOR REVIEW and is reported at State v. Howard Davis, 2020AP910,, decided NOV/17/2021, is unpublished.

The opinion of the Wisconsin State Court of Appeal appears at Appendix F to the petition and is reported at State v Howard D. Davis, 2020AP910, Reconsideration, is unpublished.
(Reconsideration, denied SEP/03/2021.

The opinion of the Wisconsin State Court of Appeals at Appendix G.to the petition and is reported at State v Howard D. Davis, 2020AP910 State court of Appeals denied SEP/03/2021 is unpublished.

The opinion of the Wisconsin, Milwaukee County Circuit court appears at Appendix H to the petition and is reported at State v. Howard D. Davis, 14CF003716.denied 4/08/2020. (§974.06)

The opinion of the highest state court to review the merits appears at Appendix I to the Petition for review and is reported at State v. Howard D.Davis, 2017AP942-CR,denied 4/09/2019, is unpublished.

The opinion of the Wisconsin State Court of Appeal appears at Appendix J to the petition and is reported at State v Howard D. Davis, 2017AP942-CR, Reconsideration, denied 1/10/19.

The opinion of the Wisconsin State Court of Appeal appears at Appendix K to the petition and is reported at State v Howard D. Davis, 2017AP942-CR, denied 12/11/18 is unpublished.

The opinion of the Wisconsin, Milwaukee County circuit court appears at Appendix L to the petition and is reported at State v. Howard D. Davis, 14CF003716. Circuit court (§974.02)

JURISDICTION

The Eastern District of Wisconsin dismissed my 2254 habeas 5/09/23. Motion to Reconsider denied 9/07/23. The United States Court of Appeal for the Seventh Circuit denied C.O.A 3/06/2026, timely filed rehearing denied 4/10/2026. The jurisdiction of

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

The date on which the highest state court decided my case was 11/17/21. A copy of that decision appears at Appendix I. The jurisdiction of this Court is invoked under 28 U.S.C §1257(a)

CONSTITUTIONAL PROVISION AND STATUTES INVOKED

The Sixth Amendment of the United States Constitution provides: In all criminal prosecution the accused shall enjoy the right to speedy trial, by an impartial jury of the States and district shall have been committed which district shall have been previously ascertained by the law and to confronted with the

witnesses against him to have the compulsory process for obtaining witness in his favor and to have the assistance of counsel for his defense.

In all criminal prosecutions, the accused shall...have the Assistance of Counsel for his defense and as well as right to first appeal Fourteenth Amendment United States Constitution...No State... shall...deprive any person of life, liberty, or property without due process of law.

STATEMENT OF THE CASE

During direct appeal Post conviction counsel was ineffective. The proof of this is overwhelming. REVIEW The state courts decisions (**Appendix L**), (**Appendix K**). Both of these courts denied the motions due to the lack of material facts provided within the claims. The Wisconsin courts provided me with a road map of "how" the claims were inadequately argued that led to a

decision on why the appeal was denied. It was because post conviction counsel failed to provide basic facts within the claims he presented to the courts. According to the Wisconsin court of appeals counsel failed to "*provided analysis*" and failed to provide "*references to any facts or law to support the conclusion*" the court ruled "*we need not address undeveloped arguments that are not supported by legal authority*"

State v Davis 385 Wis.2d 513, ¶43. (Appendix K) Every single claim was denied by the state court because post conviction counsel actions and inactions. "*Howard Davis did not allege sufficient facts regarding his ineffective assistance of counsel and jury misconduct claim that would entitle him to relief*" i.d ¶3. Even though counsel is not mentioned in the state court's decision, it was counsel who researched, edited, drafted, and presented these motions to the court. "*Howard Davis did not present sufficient facts to establish a prima facie case*" i.d ¶19, "*Howard Davis motion is missing the factual details that would be necessary*" i.d ¶35, "*Howard Davis motion does not explain*" i.d ¶39, "*Howard Davis motion does not challenge*" i.d ¶40, "*Howard Davis motion does not allege sufficient facts*" i.d ¶44, in a short paragraph in his post conviction motion, Howard Davis assert counsel was ineffective" i.d ¶45, "*Davis forfeited the issue by failing to establish that he properly raised it at trial*". i.d ¶53, "*Howard Davis makes speculative and conclusory assertion*" i.d ¶?, "*the trial court denied the motion without a hearing, holding that it could not pass on the merits without more factual pleadings*" i.d ¶58, (Appendix K) This is why my claims were denied. "a convicted defendant making a claim of ineffective assistance of counsel must identify acts or omissions of counsel that are alleged not to be result of reasonable professional judgement" **Strickland** 104 sct 2052. The requirements to receive an evidentiary hearing, "*to obtain an evidentiary hearing, a post conviction motion should satisfy the Five w's and one h test*" See **State v Allen**, 274 wis 2d 568, ¶23. Counsel failed to provide these requirements in every claim. Davis has identified these acts and omission by counsel, and found no strategic reason to withhold key facts from a motion that requires key facts. Counsel deficient

performance while briefing these claims is specifically cited for why the claims were denied. Had counsel properly researched, edited, drafted, and presented these claims to the court with the 5 w's and 1 h, **Allen** would have been satisfied. Davis would have received an evidentiary hearing. It's "a reasonable probability that

but for counsel's unprofessional error, the results of the proceeding would have been different." *Buck v Davis* 580 U.S. 1001 137 S. ct 759. The lower court road blocked me at every turn. After post conviction counsel sabotaged my \$974.02 direct appeal, Davis was not able to get one issue past the courts. This is after Davis alleged counsel was ineffective during direct appeal. Furthermore, "A defendant whose lawyer does not provide him with effective assistance on direct appeal and who is prejudiced by the deprivation is thus entitled to a new appeal." *Mason v Hank*, 97 f3d 887, 892

(7th circuit). Why wasn't Davis entitled to at least one adequately raised claim during direct appeal by counsel? Since direct appeal all my claims and arguments has been a snowball effect of issues being buried under mountains of erroneous rulings by the state courts, and egregiously enacted state procedural defaults.

Alibi claim

Trial counsel was deficient for failing to present Davis's Alibi defense to the juror. Davis describes how this deficient performance prejudiced the proceedings. Davis explained that Gordon Yancey, a 40 year Veteran of the U.S marine Corp placed Davis miles away from the crime between 3pm through 11pm playing chess and watching T.V. at the time these crimes occurred. (DKT 45-2 pg.22) Davis Asserted in the motion "Had Gordon Yancey been called to testify it would have given the jury the opportunity to place Davis somewhere other than the crime scene." (DKT 45-2.pg 3-4) The jury was denied the chance to hear from Akira Wilbert who's affidavit alleged she spoke to

Davis "several times" between 5pm through 9:30pm, on the night in question on a landline about bringing the boys over to visit. (DKT 45-2.Pg 23) This was a catastrophic error by counsel considering this was a circumstantial case. Davis addressed the circumstantial evidence which lacked "eye witnesses" "physical evidence" a "gun" recovered and "evidence of Davis aiding and abetting in the commission of this crime". Davis asserted "the failure to call Gordon Yancey as a witness was deficient and prejudicial to Davis as there was a reasonable probability that Davis would not been found guilty had Yancey testified" (Dkt 45-2.pg 4) The jury already acquitted Davis and Chisem of all firearm charges. The jury was not convinced of everything. One juror believed "*i had someone else do it*" See DKT 45-2.pg.42-43, Another juror believes "*i was in the position to stop it, and he didn't*" See (DKT 45-2 pg.36) I was not charged with conspiracy, nor was there any jury instruction on conspiracy, nor was there evidence "*i had someone else do it*", nor was Davis in the "*position to stop it*" I was miles away. Had counsel presented this alibi defense, I told him about prior to trial, it would have convinced some or all of these jurors of my innocence. If the jury would had been provided accounts of **who** Davis was with, **what** Davis was doing, **when** Davis was there, **where** the location was, and **why** Davis couldn't have been involved, it a reasonable probability Davis had been acquitted. Counsel was so ineffective at trial that he "was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S., at 687, 104 S.Ct. 2052. Davis filed a §974.06 in the Circuit court alleging post conviction counsel was ineffective for failing to provide the §974.02 Alibi claim with adequate facts. This claim lacked specific facts. Such as, 1). What Davis would testify to in relation to the alibi. Davis, 2017AP942 ¶ 25, and 2). When trial counsel was made aware of the alibi, Davis, 2017AP942 ¶ 26. These

assertions were important, and the claim could have been denied on these Errors by counsel alone. But 3). Flanagan's major mistake was the failure to put the actual time of the alibi in the affidavit ¶23. This gross negligence left open the possibility Davis was at the crime scene. Without these facts inside the motion, the courts were unable to pass on the merits without more factual pleadings. These facts were not impossible to obtain, because Davis provided them within the §974.06 motion. This proves counsel was negligent in his judgement at the time he presented this claim to the court. The absence of these key factual details was the reason the claim was denied. (Appendix k ¶23) This is the direct definition of "**reasonable probability**" but for counsel's unprofessional error, the result of the proceeding would have been different. *Buck v Davis*. 580 U.S 1001 137 S. ct 759.

The state court decision was that Davis failed to "address the "extraordinary evidence of guilt", (Appendix G ¶13)

State v Davis 965 N.W. 2d 180 ¶13 Davis's allegations in his current motion, however, do not address the "extraordinary circumstantial evidence of guilt" that was presented against Davis at trial. In other words, Davis has not asserted how postconviction counsel's failure to obtain an adequate affidavit was prejudicial, in that Davis has not demonstrated a reasonable probability that the outcome of his trial would be different had his alibi witness testified. See *State v. Balliette*, 2011 WI 79, ¶¶24, 70, 336 Wis. 2d 358, 805 N.W.2d 334. (Appendix G ¶13)

Here, the trial court ruled "*In contrast the extraordinary circumstantial evidence of guilt presented through the state's witnesses, the affidavits from the alibi witnesses are vague as to time and do not rule out the possibility that the defendant committed the offenses. under the circumstances, there is no reasonable probability that the jury would have acquitted the defendant if the alibi witnesses had testified.*" See (Appendix

L PG 5) The court stated under "the circumstances", the only reason why it was "no reasonable probability" then (during § 974.02) was because of the "vague as to time" and "do not rule out the possibility that the defendant committed the offenses" issues in the affidavit. Davis's §974.06 revised affidavit was that game changer.

ALIBI. GORDON YANCEY

"flanagan asked what time of the day was i with Davis, i told him late afternoon into the evening. had he ask the approximate time i would of told him between 3pm-11pm on the day of june 6 2014." Yancey stated "Davis was with me the entire time" "we watched tv and played chess" "i knew he was not involved in this shooting on that date, or at that location or at that time, because he was with me" " he never left the house between the times we was together between 3pm -11pm on june 6 2014" DKT 45-2 pg 22

This affidavit contains the time of the alibi, who Davis was with, when and where Davis was from the night in question. The state court acknowledged this part of the claim was cured.

"With regard to the first claim—the failure to call the alibi witness—Davis has submitted a new affidavit from that witness which includes specific times that Davis was purportedly with this witness on the night of the shooting." (Appendix G ¶12). This decision by the court addressed the question of "vague as to time", and the "do not rule out the possibility the defendant committed the offenses" problems from direct appeal. And if this is the case, this new affidavit now shows it is a "reasonable probability" that the jury would have acquitted had the alibi witness testified". Davis asserts he has demonstrated this reasonable probability through this new affidavit that eliminates the question of the "vague as to time" ruling which was the sole reason the court denied the prior §974.02 claim.

The alleged "extraordinary circumstantial evidence"

"video evidence presented at trial that identified the vehicle used in the shooting, and established that two individuals were in the vehicle at the time of the shooting; two witnesses who testified that they saw gunshots coming from the vehicle used in the shooting and that they saw Davis and his co-defendant, Jarmel Chisem, in the same vehicle shortly before and after the shooting, and later saw Davis and Chisem exit that same vehicle they had just seen used in the shooting; the testimony of Nelson, who was incarcerated with Davis, where he stated that Davis admitted to killing the victim with either a .45 or .357 caliber revolver; crime lab evidence showing that .38/.357 and .45 caliber bullets were recovered from the crime scene; and another witness who was incarcerated with Davis and Chisem at the Milwaukee Secure Detention Facility, and overheard them talking about a homicide they were involved in—in particular, that Davis told Chisem that he should have hidden the vehicle in a garage." (DKT. 19-1 pg.37-38) (Appendix L PG 5)

Davis asserts he addressed this evidence. (Dkt.19-5 pg 10-15).

"it was established (through video evidence) it was two individuals in the vehicle at the time of the shooting." (DKT. 19-1 pg.37-38). The court did not state where this testimony could be found, or where it was established how many people were inside the vehicle given, no one testified to ever seeing who was inside this vehicle at the time of the shooting.

FABIAN EDMOND. The trial court stated that Fabian Edmond witnessed gunshots coming from the vehicle, and seeing the defendant in the vehicle shortly before the shooting, and both defendants getting out of the vehicle after the shooting (Dkt. 19-1 pg. 37 - 38) .

Edmond testimony.

Q. And that you heard gunshots in the area on north 16TH street.

A. Yes, sir.

Q. But you didn't see where the gunshot were coming from?

A. No, sir. (DKT. 19-12. Pg.-39)

Q. I'm sorry I must have missed it. But when did you see Mr. Chisem in that car earlier?

A. It was early, during the daytime, during the daytime when he was at grandma's house.

Q. Okay. That's the only time you saw him in that car was at your grandmother's house?

A. Yes. Sir

Q. And that would have been about four o'clock in the afternoon?

A. Yes sir. Something like that. (DKT. 19-12. Pg.-82)

Mr. Edmond testified the last time he seen this vehicle was 5 hours earlier at four o'clock in the afternoon. Edmond testified he didn't see where these shots were coming from.

Earnest Davis. The trial court claims that Earnest witnessed "Davis in this vehicle shortly before the shooting". (DKT. 19-1 pg. 37-38)

Q. I show you what's been marked as exhibit no. 41. Do you recognize the vehicle?

A. Yes

Q. And you saw this vehicle on 16th street.

A. Yes

Q. You said you seen someone driving this vehicle the day before?

A. Yes

Q. We're talking about, which would have been on June 5, 2014?

A. Yes

Q. Who was the person that was driving the vehicle when you observed it on June 5, 2014?

A. Jay world (DKT. 19-12. Pg.-92)

Q. Had you seen that vehicle also earlier the day on June 6, 2014

A. Yes

Q. And did you see two individuals in fact get into that vehicle?

Mr. Novack: Objection. Leading.

Mr. APOLLO: I'll rephrase it.

THE COURT: Overruled.

Q. Immediately before you left to go to Eddie's house.

A. Yes.

Q. To pick Eddie up from that fight?

A. Yes.

Q. Did you see this vehicle that I showed you in exhibit 41?

A. Yes.

Q. And did you see any individuals getting into that vehicle?

A. No. (DKT. 19-12. Pg.-93)

The last time Earnest seen anyone in this vehicle prior to the shooting was the day before the shooting.

Q. And when you talking about how you could observe who was inside of that vehicle, you were saying that you could see who was inside this GMC because the driver's side window was down?

A. No. because I know who was driving that car the day before.

Q. So because someone is in a car the day before, they're automatically shooting the day after, right? That's your testimony?

A. Yes. (DKT. 19-12. Pg.-109)

Willie Nelson. The trial court claim Nelson testified that "*Davis admitted to killing the victim.*" (Dkt.19-1 pg. 38)

Q. Okay. Well, let me phrase it this way. Did Mr. Davis tell you that he killed his cousin? "I killed my cousin?"

A. He said I got down. Like you keep asking the same thing. (DKT. 19-13. Pg.-90-91)

The specific question of whether Davis admitted to killing the victim was asked. Nelson testified that Davis stated he "got down" on his cousin. It should be noted none of the victims in this case was related to Davis. Not cousins. Nelson previously gave a definition of the term "got down"

Q. So got down means murder.

A. It don't necessarily have to mean murder either. I guess it mean fight or whatever.

Q. So it could mean fight.

A. Yes, ma'am (DKT. 19-13. Pg.-90)

J.T. Jamil Tubbs. The trial court claim Tubbs testified Davis telling co-defendant he should of hid the vehicle in the garage. (Dkt.19-1 pg. 38)

Q. Do you remember while you were sitting at the table whether Mr. Davis or Chisem were talking about a truck?

A. Yes

Q. and there was some statement about the fact that Mr. Chisem should have put the truck in the garage to hide it?

A. Yes

Q. You did. You do remember Mr. Davis telling Mr. Chisem that?

A. Not--I just--I just remember about a truck.

Q. Did you tell Detective Bell that Mr. Davis asked Mr. Chisem why he didn't put the truck in the garage to hide it from the police?

A. I don't remember, No. (DKT. 19-14. Pg.-48)

Tubbs said "NO"! Tubbs didn't testify to Davis telling Chisem to hide the truck. "*I don't remember, NO*" do not equal a yes! The state courts are cherry picking words out of the evidence to substantiate their claim of extraordinary evidence. The state court makes it appear that it was a landslide of perfect witnesses for the state. The court didn't express how inherently unreliable the jailhouse informants are. "*By definition, criminal informants are cut from untrustworthy cloth and must be managed and carefully watched by the government and the courts to prevent them from falsely accusing the innocent* **Lee v. United States**, 343 U.S. 747, 757, 72 S.Ct. 967, 973, 96 L.Ed. 1270 (1952).

So with this alibi testimony there is a reasonable probability Davis would had been acquitted had the jury heard from the alibi. "*Since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt,*" **State v. Brown**, 2003 WI App 34, ¶14. When the state court decided to allege "Davis admitted to killing the victim." (Dkt.19-1 pg. 38) as a piece of this evidence, it did so to create value. Nelson testified "He said I got down." (DKT.19-13. Pg.-90-91). Why couldn't the court use that term? "*i got down*"?, because "*I got down*" "don't necessarily have to mean murder either, I guess it mean fight or whatever" DKT 19-13 pg 90. The court twisting "*I got down*" to "*killing the victim*" was an extraordinary boost to the value of the circumstantial evidence.

How does Davis address evidence that never existed? That would be impossible. The court's decision is based on a reason that could not have been countered even with a perfect motion (**Lee**, 534) The state court decision has put me in a position where even "flawless compliance" would not be good enough. And as the court can notice i "substantially complied" with the state procedural.id(citing Lee 534 U.S. at 382.) In order for this court to base its decision on **Balliette**, the court had to

fabricate the facts. This is an exorbitant application of the rule. Making the evidence appear more than what it was, was the "subterfuge to avoid federal review of a deprivation by the state of rights guaranteed by the constitution". See *Lopez v Schriro* 491 f. 3d 1029, 1043 (9th Cir 2007) The state court need extra evidence to decide the "reasonable probability that the jury would not have acquitted the defendant" When the state court decided to interject its own agenda into the evidence while basing its decision it created that exorbitant application. Was Post Conviction counsel ineffective? "limited category" exist of 'exceptional cases in which exorbitant application of a generally sound rule renders the ground inadequate to stop consideration of a federal question" *Lee v Kemna*, 534 U.S. 362, 376 (2002). The state court stretched the circumstantial evidence as far as it could go. Then the court did something "unexpectedly" and "freakishly" the court made up facts that didn't exist to validate its procedural bar. *Prihoda v. McCaughry*, 910 F. 2d 1379. This was an exorbitant application of the rule. Davis has made a showing of ineffective assistance of counsel and due process. Davis has shown that a jury of reason could debate whether this claim is procedurally defaulted.

FAILURE TO INVESTIGATE

Davis asserted he was denied effective assistance of trial counsel when counsel failed to do any pre-trial investigation. Davis asked counsel prior to trial to send out an investigator to investigate, but counsel told Davis "no, because of the states case". (DKT.45-2.pg.25. lawyer notes) Counsel was provided with information indicating Davis was at home at the time of this shooting, with specific people who would testify to these accounts. (DKT.45-2.pg.20. Davis affidavit) (DKT.45-2.pg.22. Yancey affidavit) (DKT.45-2.pg.23. Wilbert affidavit) Davis asserted that had counsel done an investigation he would have

independently discovered these people, called them to testify, and Davis would have been acquitted. Davis argues that his counsel was so ineffective at trial that he "was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S., at 687, 104 S.Ct. 2052. The state court ruled that Davis's failure to investigate claim was previously raised in §974.02.

"The other claims that were previously raised claim two, three, and four, and six are merely variations of the same claims that were rejected in Davis's initial post-conviction motion." Rephrasing the same issue in slightly different terms does not create a new issue". *State v Davis* 965 N.W 2d 180 ¶14. (Appendix G ¶14)

The state court did not exactly state where or how the claims were related, or how the claims were the same or similar. There is no comparison analysis, nor a rational explanation as to how the court came up with this ruling. Davis was placed at a huge disadvantage because he didn't know where to look to find the failure to investigate claim during the initial §974.02 post-conviction motion. The §974.02 motion does not mention failure to investigate not one time, on any page. See Dkt 45-1. The only way Davis came to understand was in the Eastern District decision when it denied my issue. See DKT 28 page 12 *5 "failure to investigate was raised explicitly in connection with the alibi defense in the § 974.02 motion." The best way to show the court was wrong is to point to the record. See below the entire

§974.02 Alibi defense claim.

"Howard Davis asserts that trial counsel erred by failing to present his alibi defense to the jury. The state alleged at trial that one the evening of June 6, 2014 Davis was inside a vehicle at the scene of a shooting at 2255 N. 16th street in the City of Milwaukee. Contrary to this claim three witnesses instead placed Davis at his residence that night, which is located at 4415 n. 28th Street in the city of Milwaukee. Those three witnesses are Howard Davis's father, Howard Davis Sr., his uncle Gordon Yancey, and the mother of his children, Akira Wilbert. Affidavits from Yancey and Wilbert are attached to this motion.[see attach affidavits, exhibit 1 and 2] their statement contain highly detailed recollections from the night of June 6, 2014." Dkt

~~451~~ pg 3
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As we all can see, it is nothing about failure to investigate within the Alibi defense claim. The entire issue was a short paragraph. The district court made up entire quotes that were supposed to be within the §974.02 alibi defense claim. How was "failure to investigate" raised explicitly in the alibi defense claim when there is no mention of failure to investigate, failed to investigate, or even the word investigate in the alibi defense claim, or in the entire motion? The district court went as far as to state "the fact stands that the Wisconsin court of appeal, on the 974.06, held that the failure to investigate claim was merely [a] variation[]" of the failure to present the alibi defense claim" Dkt 34 page 9 fn 2. (Appendix C. PG 9 FN 2) At *State v Davis* 965 n.w 2d 180 ¶14, It only mentions 4 numbers, "claim two, three, and four, and six". If this court searches the Circuit court denial of that post-conviction motion, you would see no mention of failure to investigate there. (Appendix L) Davis asserts failure to investigate should not be given res judicata effect. The only reason the state court denied this claim on this specific state bar was to deny my federal rights asserted, not because it was previously raised.

Appellate counsel attempted to skirt the rules and raise *failure to investigate* for the first time in the appellate brief. The Wisconsin court of appeals refused to consider *failure to investigate* then, because it was not raised in the initial post conviction motion first. See (Appendix k pg 8 fn*4)

*4."Although Davis asserts that trial counsel *failed to investigate the alibi defense*, his post-conviction motion only asserts that trial counsel "failed to present an alibi defense" we will review only allegations contained in the four corners of Davis post-conviction motion, not any allegations contained in the brief." (Dkt.19-2 pg.8)(Appendix k pg 8 fn*4)

This proves the state court knew *failure to investigate* was not raised in the initial post conviction motion. The Wisconsin courts are just flip flopping in their rulings. How? By ruling *Failure to investigate wasn't in the initial post conviction motion during §974.02, See (Appendix K pg.8 fn*4)* to the flip flop that *Failure to investigate was in the initial post conviction motion during the §974.06. See (Appendix G ¶14)* Nothing i said would have convinced this court. The state's court decision is based on a reason that "could not have been countered" even by a perfect motion. *id.* (citing *Lee*, 534 U.S. at 381), The state court decision has put me in a position where even "flawless compliance" would not be good enough. And as the court can notice i "substantially complied" with the state procedural.*id.*(citing *Lee* 534 U.S. at 382.) Post conviction counsel was ineffective for failing to argue this claim in the initial postconviction motion. Had counsel presented this claim the results of the proceedings would have been different. Davis has shown a substantial showing of a denial of his constitutional right, and a debating juror would see this.

**TRIAL JUDGE PROVIDED EVIDENCE TO THE JURY WITHOUT DAVIS
KNOWLEDGE AND WITHOUT TAKING PRECAUTIONS.**

Three jurors provided accounts of possible jury tampering. These jurors were questioned on different dates, different times and different places. All three jurors confirmed being provided with evidence during deliberation.

Juror. Heather L. Rehorst; *Heather stated that they (the jurors) deliberated for 7 hours, and during those 7 hours they reviewed all the note each of them had taken during testimony, and they also had the trial transcripts available for them to review.*

Juror. Stanley L. Wisniewski; *Wisniewski stated that the first ballot was NOT unanimous. The jury was pretty close to being 50/50 in the beginning, but after they reviewed trial transcripts of the testimony, and each of them reviewed their notes, they eventually arrived at a unanimous "Guilty" verdict.*

Juror. Renee A. Koeberl; *Renee said, at first, there were a couple Jurors that felt the Defendant was innocent, but after reviewing their notes, and trial transcripts provided to them, they eventually arrived at a unanimous "Guilty" verdict. (DKT. 19-5 pg.92-97).*

Davis asserted he was never informed of this unverified evidence and third party communication reaching the jury. Davis alleged the trial court entered the jury room and provided evidence to the jury without the defendant's knowledge. The trial court did not deny it. Instead the trial court enacted a state procedural rule to default this claim, to stop federal review. This was the fox guarding the henhouse. The trial court was in the position to rule on the merits of the jury tampering claim he was accused in. Even the Eastern District court heard

Davis's arguments ~~that~~ the state courts applied this rule "exorbitantly" and "freakishly" and "unexpectedly", But the District court failed to consider whether to render the rule inadequate. The District court at (Appendix C.pg 5) "*The petitioner does not explain how the trial transcript reaching the jury prejudiced him*" Davis would refer to Remmer; "*In a criminal case, any private communication, contact or tampering directly or indirectly with the juror during trial about the matter pending before the jury is for*

obvious reasons deem presumptively prejudicial". See Remmer 347 U.S. 227, 230, 74 S. Ct. 450, 98 L. Ed. 654 (1954)

"Generally, when a defendant seeks to challenge the validity of a verdict under Wis. Stat. § 906.06(2)(2015-16), the defendant must show "(1) that the juror's testimony concerns extraneous information (rather than the deliberative process of the jurors), (2) that the extraneous information was improperly brought to the jury's attention, and (3) that the extraneous information was potentially prejudicial." State v. Eison, 194 Wis. 2d 160, 172, 533 N.W.2d 738 (1995). What Davis alleged in §974.06 was 1.) unverified transcripts was provided to the jurors without disclosing this to the defendant. The defendant did not have a chance to inspect, or review these transcripts for accuracy, and was denied the fundamental option to object. 2.) The trial court provided this prejudicial evidence to the jury under the cloak of secrecy in the privacy of the jury room, during deliberation. "although the jury has heard the testimony before providing them a copy of only limited testimony may prejudice the defendant because the jury may unduly emphasize that testimony" United States v Berry 92 F.3d 597. And 3.) Remmer states "In a criminal case, any private communication... is for obvious reasons deem presumptively prejudicial". See Remmer 347 U.S. 227, 230, 74 S. Ct. 450, 98 L. Ed. 654 (1954). Davis provided all the facts required to challenge the validity of a verdict under Wis. Stat. § 906.06(2) (2015-16).

Did the §974.06 jury statements contain anything that was prohibited such as "*deliberative process of the jurors*"? All the state court had to do was point to this prohibited portion of the statements. The only way this claim could have been denied based on the jury statement is if they went into the *thought process* of the jury during deliberation, which the portions Davis used did not. But what these statements did go into was details of tampering by the trial court. The state court ruling

State v Davis 956 ¶15 "That statutory prohibition likewise applies to claim five in his current motion, as it is also based on post-trial juror statements." (Appendix G ¶15) The state court denied this claim simply because the claim was "based on post-trial juror statements." This ruling cited nothing that dealt with whether the statement went into the "deliberative process of the jurors" The state court at ¶15 cited the "initial post conviction motion" and the "jury misconduct" claim and how "that evidence was stricken from Davis's motion by the trial court pursuant to Wis. Stat. § 906.06(2), which prohibits a juror from testifying regarding "any matter or statement occurring during the course of the jury's deliberations[.]".i.d (Appendix G ¶15) It was one juror statement associated with the jury misconduct claim. Juror Amanda Lobacz. This juror statement was not stricken from the motion. See (DKT.51-1 pg.3). The court cited at ¶15 "prohibits a juror from testifying regarding "any matter or statement occurring during the course of the jury's deliberations" Here, the court cherry picked one sentence out of the rule in an attempt to make it appear "any matter or statement occurring during the course of the jury's deliberations" could not be testified to. But we ALL know jurors can testify. Section §906.06(2) of the Wisconsin Statutes renders incompetent any evidence of what transpired during the actual jury deliberation "except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear on any juror". Also see federal rule 404. The state court would like to only apply parts of law that suits him, and ignore the key provisions that guarantee a fair proceeding.

When the state court denied this claim simply because they were "based on post-trial juror statements." This was an exorbitant application of the rule. Moreover, during §974.02 the Respondent filed a motion to have them statements struck for specific reasons, none being just for being juror statements.

During §974.06 appeal no motion by the state was filed to prohibit the introduction of these statements. The state court unilaterally struck these statements without any request from the state. During §974.02 the respondent described in the motion what was not permissible within the juror statements, and the court agreed. Here, there is no objection from the respondent from these §974.06 juror statements. Also the state court failed to point out how these juror statements were prohibited based on §906.06(2). The state court decision is based on a reason that couldn't be countered even with a perfect motion. (*Lee*, 534) The court believes he can strike juror statements simply because they are jury statements. Take the court's own word for it. " *That statutory prohibition likewise applies to claim five in his current motion, as it is also based on post-trial juror statements.*" *State v Davis* N.W.2d 180 ¶ 15.(Appendix G ¶15) This was more than "[a]n erroneous admission under the rules of evidence" This ruling "is so egregiously prejudicial as to implicate constitutional principle" *Richardson v Lemke*, 745 f 2d 258,266 &n.3(7th cir);id at 275. The state court decision has put me in a position where even "flawless compliance" would not be good enough. And as the court can notice i "substantially complied" with the state procedural.id(citing *Lee* 534 U.S. at 382.) What did this default cost me? It cost me a claim that the trial judge entered the jury room during deliberations, unsupervised, with evidence that wasn't verified, and exposed it to the jury while deliberating. This was a substantial constitutional issue that was ripe for appellate review had the Wisconsin court played by the procedural rule. Post Conviction counsel was ineffective for failing to raise this sufficient and obvious issue. Had counsel raised this claim Davis would reviewed an evidentiary hearing. Davis has shown a substantial showing of a denial of his constitutional right.

Jury misconduct

State v Howard Davis 385 Wis.2d 513 ¶ 57 "[o]ne juror knew about the mother being shot" and he [k]now from his wife, but didn't tell us until after we reached our decision". (Appendix K ¶57)

Ms Lobacz has provided facts if true means Davis deserved an evidentiary hearing. Ms Lobacz stated "one juror knew about the mother being shot" Ms Lobacz provided the (who), the (what ,where ,and when) "and that juror knew from his wife, but did not tell us until after we reach our decision." The court stated Howard Davis does not state how given the nature and character of the states case how, the information was potentially prejudicial, and finally the court stated (why) the juror would disregard the court instruction. i.d ¶60. The state court failed to understand the gravity of this issue. If the court really took the statement seriously they would have seen Ms lobacz tell a very detailed story. She said " one juror knew about the mom being shot". There is so much information within this statement that shows 1.) at least one juror learn information that was not attributed from the witness stand, and 2.) This juror learns this information from "his wife". Background... Davis mother was shot and killed while sitting in the car with Davis. The news and newspaper articles portrayed this as a revenge shooting. See(DKT 51-1 pg 10-13) The online court record also repeated conversations between the court, the state and Davis's counsel about the possibility of a revenge aspect. See (DKT 51-1 pg.11) There was no way this juror did not learn this revenge scenario. How was this prejudicial?, because of the cycle of violence effect. Jury sympathy, jury bias, jury outrage. I did not want my jury to have this information. This information tainted the jury. How? When at least one juror

participates in deliberation with this information learned from his wife. This was top of mind to this juror because he alerted Ms Lobacz of it as soon as they reached a decision. The jury should only judge me on the evidence learned in open court, not outside evidence and outside influence. I had no opportunity to defend myself from this. Now the court asks (why) would the juror disregard the court's instruction? We should have had an evidentiary hearing and asked this question. The court instructed the jury Dkt 19.10 page 75 *"there a number of instructions the court in fact gives to you during deliberation and throughout your tour of duty here. and this is number one, you are not to talk or discuss the case amongst yourselves or with anybody else outside the jury room and you're not to do any independent investigation of the case you don't go to Ccap. you don't go to facebook. you don't do any of that stuff as far as independent investigation."* and again, see Dkt 19-11.p.140 *"again im going to ask you not to discuss the case amongst yourselves or with nobody else. no independent investigation."*, see Dkt 19-12.p.123 *"again im going to remind you not to discuss the case amongst yourselves or with nobody else."*, See Dkt 19-13.p.123 *"again im going to remind you not to discuss the case amongst yourselves or with nobody else. no ccap no facebook none of that"*, See Dkt 19-14.p 131*"again im going to remind you not to discuss the case amongst yourselves or with nobody else."* The court told them each time, do not discuss this trial with the outside and do not do any independent investigation. The judge's instructions didn't matter to this juror. The court said the juror is not named. We could have called Ms Lobacz back in to investigate who this juror was. *"the hearing may be used to obtain additional information competent testimony bearing on prejudice, such as the specific nature of the extraneous evidence and the circumstances under which it came to the juror attention"* **Manke v Physicians Insurance Company**,, 2006 wi app 50,289 wis 2d 75, 712 n.w 2d 40.

Davis has provided all the W's and H's he could, but these crucial aspects still escape the state court understanding that

a juror witnesses another juror make an admission of violating the court's instruction. The information that was learned is not the issue. (not yet). The court instruction being violated is the subject. Based on what Ms Lobacz witnessed, this was a solid issue of juror impartiality. And "*The remedy for jury impartiality is a hearing. This requirement is rooted in the constitution. Due process means a jury capable and willing to decide the case solely on the evidence before it*" **Hank v Zenk** 692 F.3d 793:2012 U.S app at 15, quoting **Remmer** 347 U.S at 229.

Davis provided the "sufficient reason" to allege counsel was ineffective for failing to adequately argue this claim. This satisfied the §974.06(4) requirement. The state court failed to acknowledge the sufficient reason. This was that bridge that allowed Davis to reargue the claim. §974.06(4)

See Wis. stat. §974.06(4) provides: All ground for relief available to a person under §974.06 must be raised in his or her original, supplement or amended motion, Any grounds finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived ... unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion. (Emphases underlined)

Davis specifically alleged that counsel inadequately raised this claim. See DKT 45-2. The state court ignored this completely because the court didn't even mention the ineffective claim. **State v Davis 965 N.W 2d 180 ¶14.** "The other claims that were previously raised claim two, three, and four, and **Six** are merely variations of the same claims that were rejected in Davis's initial post-conviction motion." Rephrasing the same issue in slightly different terms does not create a new issue". (**Appendix G ¶14**) This was the entire ruling on this claim. The state court only mentioned Claim Six. Nothing about ineffective assistance of post conviction counsel. In Wisconsin, a Court "*exercise of discretion is not equivalent to unfettered decision making*" **Hatung v. Hartung** 102 Wis 2d 58, 66, 306 N.W 2d 16 (1981).

" A discretionary determination, to be sustained must demonstrably be made based upon the facts appearing in the record". *Howard v Duersten* 81 Wis 2d 301, 305, 260 N.W 2d 274 (1977). Nothing at *State v Davis* 965 N.W 2d 180 ¶14. address the ineffective assistance of post conviction counsel, or the 974.06(4) "Sufficient Reason". Had counsel provided all the facts required during the initial postconviction motion the outcome would have been different. Davis would have been granted an evidentiary hearing. This was an exorbitant application of the rule. The state court decision is based on a reason that couldn't be countered even with a perfect motion. (*Lee*, 534 U.S. at 382.) The state court cannot reconcile that post conviction counsel can be ineffective. The state court is denying me access to the ineffective assistance of counsel defense. The state court decision has put me in a position where even "flawless compliance" would not be good enough. And as the court can notice i "substantially complied" with the state procedural.id(citing *Lee* 534 U.S. at 382.) Davis has shown a substantial showing of a denial of his constitutional right.

Reason for granting writ

Rule 10 (a) a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the lower court, as to call for an exercise of this court supervisory power;

Davis asserts the 7th cir "has departed from the accepted and usual course of judicial proceedings" by failing to Grant the C.O.A after Davis made a substantial showing of a denial of a constitutional right. The facts Davis provided were not open for interpretation, or invited a discretionary decision on whether there was ineffective assistance of counsel, jury tampering, or juror misconduct. The record conclusively

demonstrates that counsel was ineffective, and that his errors harmed the proceedings. Evidence was presented that the trial court provided evidence to the jury without the defendant's knowledge, and a juror provided a statement that another juror researched the defendant during deliberation. Davis provided sufficient, and sunifigent facts that cast doubt on the procedural bar. This doubt was reasonable to make it likely that a debatable juror of reason could debate whether the claims were defaulted. The 7th cir decided no claims were debatable given the extraordinary details accounts from the record which proves abuse of discretion, manufacturing of evidence, and the lower court failing to review the relevant document before making the decision to dismiss the 2254 habeas. The 7th cir has placed a high standard on being granted a C.O.A above the low bar that only requires a reasonable juror able to debate the claim. "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a certificate of appealability (COA) should issue, and an appeal of the district court's order may be taken, if the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. 28 U.S.C.A. § 2253(c). "*Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000), This calls for an exercise of this court's supervisory power; Rule 10 (a).

(The United States court of appeals has sanctioned such a departure by the lower court, as to call for an exercise of this court supervisory power) Rule 10 (a)

In Wisconsin the §974.02 post-conviction motion starts the direct appeal process. All grounds for relief has to be raised here first or face future claims being bar under the state procedural rule. §974.02 is the cornerstone of the initial

post-conviction proceedings. In Wisconsin §974.06 is a collateral appeal that a prisoner can bring alleging post-conviction counsel was ineffective during the §974.02 proceedings.

I filed my 2254 habeas 12/21/2021. On 1/13/2023 The District court screened the petition. (DKT.12) The respondent filed its motion to dismiss 2/2/2023. (DKT.15) The district court then ordered the respondent to "serve on petitioner" "the materials listed in rule 5(d)", more specifically the district court referred to *Powers v Pollard*, no. 10-c-1127, 2011 WL 5900775 at *2 ED. Wis Nov 23, 2011. ("the respondent filed copies of the state court docket, the parties' appellate briefs, and the relevant state court opinions, so that the court was able to determine whether the petitioner procedurally defaulted his claims"). (Dkt 18.page 2). The respondent failed to provide any state court post conviction opinions. (DKT.19.p 2-3) These opinions were not only relevant but fundamentally necessary in order for the court to "determine whether the petitioner procedurally defaulted his claims" (Dkt 18.page 2). The respondent started the evidence at the "appellate briefs on direct review" See DKT 19.page 2-3. The §974.02 and §974.06 post conviction motions were not provided to the district court at this most critical moment.

The District court on 5/09/2023 Dkt 28 dismissed my 2254 habeas without ever viewing the §974.02 post-conviction motion. (Appendix D) Viewing the §974.02 motion was required due to the previously raised aspect of the state court decision. See *State v Davis* 965 n.w 2d 180 at 14"claim two, three, and four, and six are merely variations of the same claims that were rejected in Davis's initial post-conviction motion." (Appendix J). This ruling gave these claims the res judicata effect. The district court dismissed Davis's failure to investigate claim because according to the court, failure to investigate was previously raised in the §974.02 motion. How

could the district court know this? The court never reviewed the §974.02 motion. The respondent did not provide the court with this motion to "determine whether the petitioner procedurally defaulted his claims" Dkt 18. page 2. Here, the district court did something "unexpectedly" and "freakishly" either by mistake or on purpose to deceive a pro 'se PRISONER, the court pretended to have the §974.02 motion. Not only that, but the court based its decision to dismiss my appeal and deny C.O.A on viewing the §974.06 motions. The District court started off "the court finds that the claims petitioner presented in both 974.02 and 974.06 motions are indistinguishable". See

Dkt 28 page 12 (**APPENDIX D p 12**) . *"For the claim underlying Ground Ten, Petitioner argued the same underlying factual conduct and parallel legal theories in his § 974.06 motion as his post-conviction counsel did for the claims underlying Grounds One and Two in his § 974.02 motion. Compare ECF No. 19-5 at 21–26 (arguing that trial counsel failed to interview witnesses and failed to investigate Petitioner's alibi defense), with ECF No. 19-1 at 14–15 (explaining trial counsel's duty to investigate alibi and present defense, as well as failure to call*

witnesses". DKT 28 PAGE 12-13. (**Appendix D**) If you notice the district court is telling us that he viewed these post conviction motions and determined these were the facts. The district court directs the record to where in the §974.02 these facts could be found "Compare ECF No. 19-5 at 21–26 (arguing that trial counsel failed to interview witnesses and failed to investigate Petitioner's alibi defense), with ECF No. 19-1 at 14–15 "explaining trial counsel's duty to investigate alibi and present defense, as well as failure to call witnesses". (**Appendix D p.12-13**) 19-1 and 19-5 are not the §974.02 and §974.06 post conviction motions. These are Appellate briefs. The Post conviction motions and Appellate briefs were filed in two entirely different courts. The §974.02 motion was filed in the Circuit Court, by post conviction counsel, and the Appellate briefs were filed, by Appellate counsel. What was most disturbing is the district court is directing the record to the

appellant's brief for facts that are supposed to be in the §974.02 motion. None of the district court quotes are in the §974.02 motion. See the real §974.02 motion at Dkt 45-1. The district court denied my 2254 on the wrong facts, on the wrong evidence. This should really hit home my argument. Months later, Davis ask the district court to order the respondent to turn over the §974.02 an §974.06 because these motion were not part of the record, and the district court agreed. See Dkt 43-51. The §974.02 motion was finally made part of the record at DKT.45-1 and the §974.06 at DKT.45-2. If you notice my 2254 habeas was denied at DKT 28. The reason for the denial was because the court viewed the §974.02 motion. But this was impossible BECAUSE DKT 45-1. didn't exist yet. So the first time the district court viewed these motions was 5 months after he dismissed my 2254 10/04/23. The district court would not bulge. In the motion to reconsider Davis tried to explain that the court was relying on the wrong facts and the wrong evidence. But still the court pushed forward *"the fact stands that the Wisconsin court of appeal, on the 974.06, held that the failure to investigate claim was merely [a] variation[]" of the failure to present the alibi defense claim"* Dkt 34 page 9 fn 2. (Appendix C 34 page 9 fn 2) Davis asserts this is false. See *State v Davis* 965 N.W 2d 180 ¶14. (Appendix G ¶14) *"The other claims that were previously raised claim two, three, and four, and six are merely variations of the same claims that were rejected in Davis's initial post-conviction motion".* The §974.02 and §974.06 motions are especially relevant towards the claims that were expressly decided on the content in the initial post conviction motion. The §974.06 Alibi claim. The states court rule Davis failed to address the extraordinary circumstantial evidence that was presented at trial within the motion. Davis alleged the state court default on this ground should be rendered inadequate due to the state courts intentionally ignoring the facts within the claim, and

fabricating the necessary facts to stop federal review. Also the jury misconduct claim. The state court ruled this claim was previously raised in the §974.02 motion. The district court did not have these §974.02 and §974.06 documents to decide whether these claims were or wasn't alleged. The "accepted and usual" practice is not to pretend that these documents are in its possession for the purposes to simply deny the claims. In my opinion the failure to investigate was the most blatant abuse. Nowhere in that §974.06 decision does it mention failure to investigate and the alibi defense in the same sentence. The state court did not create a nexus where the two claims were the same or similar in its decision. The district court is knowingly misrepresenting the facts. At this point the district court knows that failure to investigate is not in the alibi defense claim. How do we know this?, Because failure to investigate is never mentioned or alleged in the entire §974.02 motion. See (Dkt.45.1.) Davis alerted the 7th circuit court of appeals through motions that 1. the district court failed to review the relevant evidence when it decided to dismiss my 2254, and 2. the district court based its decision to dismiss my claims on evidence it claimed to review, but didn't. See DKT 19.page 2-3, the respondent did not disclose these motions. Davis told the 7th cir the lower court was making up its own facts that didn't exist in the documents to dismiss my claims. Davis asserts he filed multiple motions in the 7th cir to enlarge the C.O.A to include arguments that the lower court essentially departed from accepted and usual judicial proceedings. Davis filed these motions 3/27/23, 6/10/23 and another one the same year. The 7th cir placed these motions on the docket as "*pending motions*" to be decided alongside the C.O.A. (**APPENDIX B**) The 7th cir viewed this request for C.O.A from 10/02/23 up until 3/06/26 when it

denied the request for C.O.A, and the "*pending motions*" without explanation. See (APPENDIX B) When the court of appeal failed to

do any investigation or due diligence into the evidence presented by Davis on these claims, it was as if the court of appeals sanctioned such a departure by the lower court to mislead these facts. The district court never had the initial postconviction motion in its possession, but he alleged it did.

The 7th cir sanctioned the lower court actions by remaining silent, after it was alerted to these abuses, and stayed the course to deny C.O.A. The court should grant certiorari for 1. The errors of the 7th cir court of appeals to sanction the lower court to depart from the accepted and usual course. If left undisturbed, the practice will stand as a binding precedent within the Seventh Circuit. And 2. The discretion this court has

to view matters of erroneous rulings, and violations of constitutional law. The reviewing courts knew the implications of granting review. The Alibi claim, jury tampering, and jury misconduct were claims of extreme importance. Davis believes had these claims received any merit review it's without a doubt these claims would have uncovered the abuses. Our court system never gave me a chance. And when the court made it appear to give me a chance, it manufactured evidence, it manufactured defaults. For example, the *failure to investigate* claim at

APPENDIX G ¶14. The ruling that this was previously raised in the initial post conviction motion. But the initial post conviction motion never mentions *failure to investigate*. See DKT 45.1.

After being sentenced to 45 years in prison and 17 years of probation, i believed in my heart that our courts would see my innocence by now. I was wrong. This is my last chance. Thank you for listening.

CONCLUSION.

Conclusion

If this court do not grant certiorari the Alibi claim that proves my innocence, the Jury misconduct that proves that a juror research during trial, the Juror tampering that proves the trial court entered the jury room and provided evidence to the jury behind my back, and the Ineffective assistance of counsel claims will be lost forever. In the interest of justice, Davis requests remand back to the district court for C.O.A or an evidentiary hearing or any redress this court deems fair. The petition for writ of certiorari should be granted.

H. D. D. S

1, 02, 2026