

STATE OF WISCONSIN CLAIMS BOARD

CLAIM OF: MAURICE J. CORBINE

CLAIM NO. 2015-047-CONV

---

DECISION

---

The Claims Board considered this matter on March 16, 2016. Claimant, Maurice J. Corbine, did not request a hearing. The Claims Board reviewed the written materials submitted by Corbine. The Sawyer County District Attorney's Office declined to submit a written response to this claim.

Background

This is a claim for Innocent Convict Compensation pursuant to § 775.05, Wis. Stats. The claim relates to Corbine's 2011 conviction for Operating While Intoxicated (5<sup>th</sup>) and Operating While Revoked (2<sup>nd</sup>). Corbine states he is innocent of this crime. He requests \$90,000 for the three years he spent in prison.

Claimant's Facts and Argument

Corbine states that on September 28, 2007, he was a passenger in a truck driven by his cousin, Rodney. He states that Sawyer County/Lac Courte Oreilles Tribal Police Officer, Twyla Dailey, pulled in behind the truck approximately 10-15 seconds after Rodney parked it in the parking lot of a local tavern. Officer Dailey arrested Corbine for OWI. Officer Dailey's report stated that she followed the truck into the parking lot because she had observed it speeding and that she pulled in immediately after the truck. Officer Dailey also reported that she observed Corbine exit the driver's side door, walk around the front of the truck and up to the passenger side door. Corbine alleges that he had already exited the vehicle and was approaching the tavern when Officer Daily arrived and that he had walked back to the passenger side of the truck because he did not have a driver's license.

Corbine alleges that both he and Rodney told Officer Dailey that Rodney had been driving the truck, not Corbine, who admits that he was intoxicated at the time. Corbine states that Officer Dailey informed him that her in-car camera was recording the incident. Officer Dailey transported Corbine to the Sawyer County Jail, where he saw her insert a DVD into the booking room recording equipment. Corbine states that

Dailey again told him the interview was being recorded. Corbine alleges that during the entirety of his interaction with Officer Dailey, both in the parking lot and at the jail, he repeatedly told her that he was not the driver of the vehicle but she persisted in arresting him. Corbine believes that Officer Dailey targeted him personally because she is corrupt.

Prior to his trial, Corbine's attorney requested copies of the in-car and booking room videos from the night of the arrest, however, the Sawyer County District Attorney's Office did not produce the videos, claiming that they could not find them. Corbine was convicted in 2011 and sentenced to 3 years in prison and 3 years supervision.

In 2013, Corbine appealed his conviction based on ineffective assistance of counsel because his trial attorney (Hoffman) had failed to adequately investigate the failure of Sawyer County to produce the jailhouse video recording. The court of appeals remanded to the trial court for a Machner hearing. After the Machner hearing, the trial court ruled that Hoffman had adopted a reasonable strategy by not pursuing the video recording because it would have shown Corbine intoxicated and behaving aggressively and that the recording would likely not have changed the outcome of the trial. Corbine appealed the trial court's ruling.

On February 10, 2015, the court of appeals reversed his conviction. Corbine was released on that same day, having completed serving his sentence. The court pointed to Hoffman's testimony at the Machner hearing that he had relied on a description of what was on the jailhouse video based on a conversation he had with an unknown individual at Sawyer County. The court found: "Hoffman acknowledged he did not know the identity of the person who had allegedly viewed the video and therefore had no basis on which to determine whether that person was reliable...Further, Hoffman testified that his belief that the video portrayed Corbine in a poor light was based upon his review of the police report—not from something the unidentified person may have said. Finally, Hoffman testified he took no further steps to locate the DVD after he was told it was missing, and he never considered further action such as filing a motion." In addition, the court also found that Hoffman was deficient by failing to ask Corbine at trial whether he denied being the driver, which would have been "highly relevant to the credibility of the defense theory."

Corbine states that the DVD recording which Sawyer County failed to provide would have supported his defense that he was not the driver and that he had repeatedly denied being the driver during his interactions with Officer Dailey. Corbine believes the Sawyer County District Attorney intentionally withheld the DVD, which would have proven his innocence.

## DA's Response and Argument

The Sawyer County District Attorney's Office (DA) recommends denial of this claim. The DA points to the sworn testimony of Officer Dailey that she never lost sight of the vehicle and was therefore clearly able to identify the claimant as the driver when he stepped out of the car. The DA notes that the jury heard the sworn testimony of Officer Dailey, the claimant, and Rodney Corbine, and apparently found Officer Dailey's testimony more credible.

The DA also notes that the claimant has presented no evidence to support his allegations that Officer Dailey targeted him personally and lied under oath. In order to find in favor of the claimant, the board would have to completely ignore Officer Dailey's report and sworn testimony, without any evidence to justify doing so.

The DA states that the claimant has also failed to provide any proof of evidence tampering on the part of Officer Dailey or the DA. Although the claimant alleges there was a dash cam video, there is no reference to such a video in the Officer's report. In addition, his allegation that the DA somehow orchestrated the disappearance of the jail house tape is without merit. In fact, the DA believes the state would have benefited from use of the tape at trial, because it would have shown the claimant's level of intoxication and aggressive behavior at the time of his arrest. The DA notes that, while the tape may have supported the claimant's allegation that he told Officer Dailey he was not the driver, it would not have proven that he was not the driver.

Finally, the DA disputes the claimant's assertion that the DA did not pursue a second trial because it could not prove its case. The DA notes that there were good public policy reasons not to retry the claimant—the costs simply outweighed the benefits. The claimant had already served the maximum sentence, so no additional jail time could be ordered. In addition, regardless of a second trial, the claimant's next OWI conviction would be a felony. There was simply no benefit to the state that justified the cost of a second trial.

The DA believes that the claimant has not presented clear and convincing evidence that he was not the driver of the vehicle and that his claim should therefore be denied.

## Discussion and Conclusion

Under the standards of Wis. Stat. § 775.05(3), the Claims Board must determine whether or not the evidence is clear and convincing that the petitioner was innocent of the crime for which he was imprisoned.


The primary evidence provided by Corbine in support of his petition was that the court of appeals reversed his conviction due to ineffective assistance of counsel. However, based on long-standing precedent, the Claims Board does not automatically equate

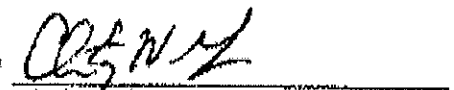
such a reversal with innocence. A claimant like Corbine must prove his innocence by clear and convincing evidence, whereas in order to obtain a reversal based on ineffective assistance of counsel he only had to make a showing that there was a reasonable probability that the trial result would have been different if he had had more effective counsel. These are two very distinct standards with different burdens of proof and cannot be conflated. Therefore, the reversal, standing alone, does not mean that a claimant has proven his innocence by clear and convincing evidence.


Aside from the reversal noted above, Corbine cites the missing jailhouse video tape as evidence to substantiate that he was innocent of the charges. While it is true that the tape may have supported Corbine's allegation that he told Officer Dailey he was not the driver, Corbine presented no evidence that the tape would have proven that he was not the driver.


Based on the above, and after reviewing all of the written submissions, the Board concludes and finds that the evidence is not clear and convincing that Corbine was innocent of the 2011 conviction for Operating While Intoxicated (5<sup>th</sup>) and Operating While Revoked (2<sup>nd</sup>) for which he was imprisoned.

Dated at Madison, Wisconsin this 1<sup>ST</sup> day of NOVEMBER, 2016

  
Corey Finkelmeier, Chair  
Representative of the Attorney General

  
Christopher N. Green, Secretary  
Representative of the Secretary of  
Administration

  
Katie E. Ignatowski  
Representative of the Governor

  
Luther Olsen  
Senate Finance Committee

  
Mary Czaja  
Assembly Finance Committee