

Bad Jurist. com
8834 E. 34 Rd.
#131 SMB #44345
Cadillac MI. 49601

To Whom it may concern

My name is Wayne Clements , or better known as inmate 118594 these days. I saw your add in the Prison Legal News wanting to know about bad Jurist (Attorneys, Prosecutors and Judges) and in my case cops.

Well do I have a story for you, my story is about police corruption, falsifying evidence, bias, Prosecutoial Misconduct, Ineffective Asistance of counsel and Court error.

I will try and keep this as short as I can but there is a lot of information in my case.

So for a little back story. On May 6th of 2016 I was arrested for rape and indecent liberties with a minor. So the State claims that on June 1st thur July 18th of 2014 and December 1st thur 31st of 2015 I allegedly had sex with my niece.

"I want to make this piont crystal clear, I am Actually Innocence of these alleged crimes"

What the State left out is that from June 1st thur July 18th time frame me and my niece lived in two differnt towns over 60 miles away from each other and during this time frame I was doing wheat harvest from 7:30 Am. until midnight. Pluse on top of all that my niece had no means to get to where i lived. (which means no car) as the State claims. now the December 1st thur 31st claimed by the State, the State excluded evidence that proved someone else was the one who was having sex with my niece under the rape shield "this evidence was key to my defense" so here is the excluded evidence on or about November 20th of 2015 my niece was taken in from of a Judge that told my niece to stay away from an older boy who was 19 years of age. The Judge told her that if she was cought around the boy again she would go to Juvenile hall and this boy would go to jail. Since she was 15 and he was 19.

At the end of April of 2016 I caught my niece still seeing this older boy. So I confronted her about it, at which piont my niece told me that I needed to mined my own business and stay out of her relationship or I would regrat it. I replied that I have been threatened by a lot of pepeol in my life, so being threatened by a 15 year old kid doesn't scares me. I then said if I fined out your still hanging out with him again and I will turn you in my self. Well you can guess what happen about week latter I was arrested for allegedly having sex with my niece in 2014.

So now that you know the back story lets jump in to the Issues with the officers in my case. such as corruption, Bias, and Falsifing evidence.

On May 3rd 2014 the Stockton Officers Don Earl and Adam Bryant met with the school counselor Ms. Gier, prior to the interview with my niece J.E. were the following conversation took place.

Officer Bryant states to officer Earl and Ms. Gier that J.E. called him last night around 7:00 Pm. and stated that she had lied about the hole thing and that it didn't happen.

I mind you that this was with a hour after her making the report.

Officer Earl then told Ms. Gier that we're not being recorded right now.

Officer Bryant then replies, The problem with that is she's already- even now she's already wrecked her credibility.

At which piont Ms. Gier states I know and you know I did everything I could to convince her and this is the other thing I told her "J.E." you need to understand that a can of worms has been opened. You can tell me you lied and it's not true, but you can't tell them that. It's opened so we can't go back and unsay those things.

This conversation was never mentioned in the probale cause affidavit. The officer failed to disclose the exculpatory fact that J.E. recanted her alligation prior to being interviewed.

Which brings us to the interview's them selfs, this is were the officers show Bias towards cases of this nature.

First off Officer Earl tells J.E. we have already been told. So you just need to tell us what happened, I know you called yesterday and wanted to change your story, thats not going to cure anything.

Officer Bryant then tells J.E. there was three of us in the office yesterday when you called, I was just sick when you called because I knew you were telling the truth it decustated us.

Officer Earl then states the following to J.E.

My daughter was molested as a child it was a baby sitter, I also had a step grandson who molested my granddaughter here last summer. It's hit home, it's hit me pretty hard a couple of times that's why i push like hell.

I know what the hell is going on in your mined, I know the feeling my family has been victimzed too.

Showing Officer Earl's Bias regaring these types of investigations.

Further Officer Earl has become a mined reader, more importantly he has dropped his role as an interviewer and become the sympathetic jury, concluding that the interviewee IS A Vicitm and no longer only an accuser who's accuastions require investigation of the facts.

When the Officer's training records were pulled they showed that these officers lacked the training to conduct an Fronesic Interview.

So you may be asking why these Officers did the Forensic Interview anyways. That's a good question. To quote Officer Earls Testimony

Q. Did the DCF worker inform you when you spoke to her that there was an appointment made with the Child Advocacy Center?

A. Yes she said she had talked to them and they would do the interview if we need it. I will take responsibility, Im the one who decided to go with it.

This clearly showing the Officer could care less about protocols , in fact to further demonstrate his disregard for Forensic Interview Protocols Officer Earl made the fallowing comment.

Q. Did she (J.E.) answer these questions on her own without prompting

A. I gave suggestions as we normally do!

Any Forensic Interview Protocol from National Children's Alliance, Child Welfare Information Gateway, Finding words and Even (APSAC) all state an Individual Conducting a Fornesic Interview must have Specialized Training and are not to use suggestive questioning. These are just some of the issues involving the Officer's in my case there are more please see the attched sheets to learn more.

The piont is when the evidence came in, it was clear that I did not abuse J.E. the State only focused on evidence that fit there narrow falseified narrative. Then in my interrogation I cooperated with police and refused to admit to something I didn't do. The State "created" this crime and then went in search of that crime. The discovery from May 4th of 2016, shows a desperate search for any shred of actual evidence against me. When bits and pieces emerged, non of which was inculpatory, the State fabricated evidence to make it look inculpatory. The Stockton P.D. continued to fabricate Dates, Times, and often provided J.E. with the answers they were looking for and then turned it over to the man they were setting up "ME". All the while there own evidence pionted to the fact that J.E. had fabricated the allegations against me. When J.E. came clean and stated she lied, J.E. was threatened and forced to maintain that lie. This conduct is not only shocking, it's a outrageous and a revolting episode not only on behalf of law Enforcement, but the District Attorney's Office as well.

Moving on to the Prosecutorial Misconduct issue's

To start off I would like to state this is on the record and in the transcript. At sentencing my trial counsel stated on the record that the prosecutor told her that ~~the~~ only reason she was taking my case to

trial was for the trial experience. This is a true statement made by the prosecutor "Daneille Muir" to my attorney.

I don't know about you but I almost feel out of my chair when my attorney told me this, I can not think of a more blatant abuse of a prosecutor's powers.

But hold on that's not the end of this D.A's misconduct. in the Preliminary Hearing the prosecutor put J.E. on the stand and started asking her about this ring she was wearing in court, the State asked if I had bought her this ring at which point J.E. replied yes. Now J.E.'s ant was sitting in the Court room during this and spoke up that's not were J.E. told me she had gotten that ring. Showing J.E. had just lied on the stand. Shortly after this testimony there was a recess called at which point J.E.'s ant told the prosecutor that's not were J.E. had stated that she had gotten that ring in fact J.E. had told her ant that she had gotten said ring from an ex-girlfriend and not me.

Now Ms. Muir the prosecutor knows that J.E.'s testimony was a lie and the State fails to correct said testimony with the Court even as of today, next the State failed to disclose this information to the defense as well. but wait it doesn't stop there.

I have included the affidavit from J.E the alleged victim. That states in fact that the prosecutor threatened J.E. with jail time if she didn't testify the way the prosecutor wanted her to. This coupled with the fact J.E. told Ms. Muir that she had lied about the whole thing before this case had ever gotten started.

This conversation was never disclosed to the defense, and yet the State has still failed to notify the Court of this statement or that the Cops left out exculpatory evidence from the probable cause affidavit.

The last part of the prosecutorial misconduct I want to point out is. At sentencing the State failed to meet its burden of proof. The State failed to prove that I represented by counsel on my past misdemeanor convictions, prior to using them to increase my criminal history score and overall sentence.

The facts about prosecutor Muir is at every turn she has been able to withhold evidence from the defense and recklessly craft a narrative that narrows down the time line to incriminate me, when the State's own evidence pointed to the fact J.E. the alleged victim was capable of lying. What is equally shocking and questionable, is how Muir and others were able to deceive the defense and the District Court without suspicion, while the interview videos all the time were sitting on the prosecutors desk that proves I was a target of a rush to judgement.

Ok let's move on to the Ineffective Assistance of Counsel.

There are so many things that my trial counsel failed to do. If I explained them all it would take up

another 10 pages, so Im just going to list them .

Trial Counsel failed to do the following

1. Failed to file a K.S.A. 21-5502 motion prior to trial to use medical records showing J.E. was not in fact sexually active on the dates alleged by the State.
2. failed to request an in camera hearing of thses medical records.
3. Failed to secure an expert witness regarding Forensic Interviewing.
4. Failed to adequately investigate evidence that could have corroborated me Alibi Claims.
5. Failed to investigate Alibi Witness
6. Failed to investigate Lease agreement and utiliy bills, that showed J.E. live in a diffent town.
7. Failed to investigate the Officers Training records.
8. Failed to call for a Daubert hearing when the Officers testified as an expert witness.
9. Failed to present evidence to support my defense theory.
10. Faile to provide the three expert witness that she promised I would have at trial, including the one she stated she was going to pay for out of pocket.
11. Failed to object to the State's failing to met its burden of proof at sentencing, regarding my criminal history score, which allowed the State to increase my over all sentnece.

There are more issues but I think you can see that my trial attorney, well shoved me under the bus, to say the lest I got the F...Ked.

I think the Court Error is plain to see but just in case I will piont out some of it. The court relied on the State to present the (PSI) report at sentencing which was unreliable, and the Court still used it to sentence me. Then there is the fact that the Court allowed the State to use hear say with no evidence to back it up.

So to end my story I am doing 25 years to life for a crime I never committed, the sad part is the allegations have changed no less then a dozen times since this case started.

I have also inclosed some evidence to back my claims that I have listed here.

You may be saying to your self that my case is a 1 in a million. well you may be shocked to learn there's been a half dozen or more case just like mine, were Kansas has convicted innocent people, and they spent years in prison fighting to get out.

Here is a list of justa few of them.

Bledso v. Vanderbilt 934 F.3d 112
CHRISTOPHER LYMAN, 311 Kan. 1

Buchhorn, 2021 Kan. App. Unpub. Lexis 459
Mashaney, 2010 Kan App. Unpub Lexis 680

In closing I leave you with this thought, This was a coordinated, deliberate, unconscriable and result-driven mechanism to creat a "crime" the State clearly sought. to further a Prosecutor's carreer. This massive abuse of power is so pernicious it undermines the very foundations of our constitutional republic. If you think it can't happen to you. Your wrong.

If you would like to know more about this case, or you think you might beable to help feel free to contact me. at Wayne Clements 118594 ECF Po. Box 107 Ellsworth KS. 67439.

Respectfully,
Wayne Clements

Cheryl A. Stewart, Esq.
Attorney At Law
110 Freeman
Oakley, KS 67748
913-321-8283
Stewartesqatt@aol.com
Sup. Ct. No. 13336

IN THE DISTRICT COURT OF ROOKS COUNTY, KANSAS

STATE OF KANSAS

Petitioner

Vs

Case No. 2016 CR :

Wayne Clements

Defendant

MOTION FOR NEW TRIAL

Pursuant to

K.S.A. 22-3501

Comes Now, Cheryl A. Stewart, Esq. court appointed attorney for the defendant and hereby prays that the Court grant the defendants motion for a new trial, after the release of the jury in the jury trial the that , held on the week of December 4,5,6,and 7, 2017, in Rooks County District Court , before the Honorable Blake Bittle. In support of his motion the defendant states the following:

Authority

22-3501. New trial. (1) The court on motion of a defendant may grant a new trial to the defendant if required in the interest of justice. A motion for a new trial based on any other grounds shall be made within 14 days after the verdict or finding of guilty or within such further time as the court may fix during the 14-day period.

(2) A motion for a new trial shall be heard and determined by the court within 45 days from the date it is ma

FACTUAL BASIS

1) Evidentiary Issues:

The Jury trial in the matter was held on December, 4, 5, 6, and 7th of December, in the District Court of Rooks County, Kansas.

The Defendant was charged in the three count complaint, with two counts of Rape, Jessica's Law, K.S.A. 22-5503(a)(3)(b)(2), and one count of Aggravated Indecent Liberties with a Child, K.S.A. 22-5506(b) (1). The complaint alleged three time specific to the charges, count one was from the 1st of June 2014, until the 18th of July, 2014, count two alleged that crime occurred on the 18th of July, 2014, and count three alleged the time frame of December 1 through the 31st of December 2015.

Evidence was presented by the State of Kansas, that Stockton Police Officer Don Earl, during questioning of the alleged victim in the case, JE, that the crimes occurred on the dates as stated above. JE never provided any dates or specific time frames to the officers, during the entire 4 hours of her two days of questioning. The officer deduced the time frames from posing questions to JE and her responding with "yeah". This was testified to by Officer Earl during the trial.

Evidence was further presented by the State through the testimony of JE. JE testified at trial that the camping trip that was the supposed July 18th incident of Rape did not occur in 2014 but in the summer of 2015. She was definite in her responses to that issue, stating it twice. This change in date affects the crime charge significantly, removing it from the off grid Jessica's Law classification to a much lesser crime, of the on grid Aggravated Indecent Liberties charge.

Evidence was never presented by the State of Kansas, during the testimony of JE, that any sexual contact may have occurred between her and the Defendant, in December, 2015. Only testimony of that was from Officer Earl, and again it was suggested to the victim, not stated by the victim. (there are additional issues on this matter, that the defendant was forced to not disclose, pursuant to the courts ruling on the Rape Shield statute.)

Evidence was presented at trial that JE, never once during the entire 4 hours of interviews over two days, described the sex act. Officer Earl finally admitted on defendant's recross that fact.

Evidence was presented that JE's testimony contradicted the evidence presented by every other State's witness.

Evidence was presented that JE recanted her May 3rd, 2016 2 hour recorded statement, on the evening of May 3rd, 2016, by contacting Law enforcement, attempting to contact her school counselor, Mrs. Gier, and contacting Mr. Austin, her FFA teacher, to whom she initially reported on the 27th of April, 2016.

Evidence was further presented on recross of JE that she recanted and she also called the Defendant and informed him that she had told the cops a story, that she had lied to the police because she was angry at him.

Evidence was presented that Mrs. Gier told JE on the 4th day of May, 2016, prior to the next 2 hour interview with police, that she could not take back her statement, that JE had "opened a can of worms and it could not be closed. That she needed to tell the police what she had told them the day before".

Evidence was presented that JE was skilled in Forensic's, as JE stated, that it was like

acting.....getting people to believe a script or story by acting and using her voice.

Evidence was presented contradicting the testimony of police that JE had moved to Stockton in

June of 2014, the evidence presented by the State was that the family moved to Stockton in September of 2014. Indicating that the Defendant would not have had access to JE in June of 2014 or July of 2014.

Evidence was presented that JE was a very angry and controlling individual during the time in which she made her initial disclosure to Mr. Austin.

Evidence was presented the initial disclosure made to Mr. Austin, consisted of Mr. Austin asking

JE if her uncle had crossed the line.....JE responded Yeah. No mention of sexual contact was made.

Evidence was presented that JE did not want to report a crime, and evidence was presented that

JE was successful in convincing, MR. Austin, Mrs. Gier and Mrs. Swain to violate the Mandatory reporting requirement, thereby breaking the law, to do what JE wanted to do.

There are other areas where contradictions in the evidence would leave reasonable doubt as to the guilt of the defendant on any of the charges as submitted to the jury and the defendant prays that the Court consider all of the multitude of contradictions and lack of evidence found in the record of the trial. The court is entitles to review all evidence that was admitted by the parties.

2) Prosecutorial Misconduct:

- a) The record will show that on a minimum of two occasions, the State of Kansas shifted the burden of proof to the defendant, and these were objected to by the defendant's attorney at the time of the State's attempt to shift the burden of proof to the defendant.

Such a shifting of the burden of proof is Prosecutorial misconduct and a violation of the defendant's constitutional rights. *SEE TOSH, 278 Kan @ 92*

- b) The record will show that the State accused defense counsel of committing a criminal act during the trial, by asking the State's witness if the Defense counsel had coached her and told the witness, Hazel Bennifield what to say during her testimony. The witness categorically denied any coaching or direction from defense counsel.

? implying before the jurors, witness credibility was coached.

- c) The record will show that the State had failed to provide information to Defense counsel concerning two items of documents that the State had intended to introduce, but had failed to have admitted into evidence. This instance was also in reference to Hazel Bennifield.

- d) The record will show that during closing argument, the State miss stated critical evidence, this was objected to by counsel for the defendant.

3) Jury Misconduct:

Defense counsel was able to communicate with two jurors, who had sat on the selected jury. One man and one woman. Defense counsel spoke to the male and female juror, after they had been released. The female juror had come back into the court house to retrieve her thermos, from the jury room. The defendant's attorney spoke with both jurors at the south Handicap entrance to the Rooks County Courthouse.

Female juror stated to Defendants attorney in response to the question, did you consider the time frame, in the instruction on count Three of the instructions, specifically

December 1-31, 2015, which was never stated by the victim during the trial. The female juror, replied "No, I/we did not consider the time elements of the crime, as to when the crimes occurred. We only wanted to make sure of the girls age." In response to defense counsels further inquiry as to consideration of the elements in the instructions, she stated she did not care, and was not concerned with them, the defendant was guilty."

The male juror, stated to Defendants attorney, upon a general question as to his consideration on the guilt of the defendant. The juror stated that the defendant was guilty, he knew that from the beginning of the trial. I asked if they had discussed the time frame elements of each count, he said" no. He said that the girl stated that it had happened at least ten times (this was through Don Earls testimony) and that was enough for him to find the defendant guilty. The defendant is a predator and he needs to go to prison." I asked if there was any discussion of the elements of the crime, as to specific time frames in each count, he stated no. He did not care that the girl had recanted and changed her testimony. No discussion of the evidence appeared to have been had.

The same male juror was overheard on the first day of the introduction of evidence, at a time that the jury was released for break, the male juror and other jurors were walking down the main stair way, the male juror was overheard by the " witness " saying " This trial is a piece of cake, we already know that outcome.". This comment was overheard by one of the State's witness's and it was not reported to counsel until after the trial was over and the jury released.

The identity of the male and female juror referred to are known to defense counsel, and they were identified by the seats that they occupied and the clothing that they wore and physical description.

4) Prior motion for change of venue: (denied)

There was one instance of an individual stating to one of the State's witnesses, that the defendant had been tried and found guilty and was serving a prison sentence. This statement was made approximately one week before trial. While not dispositive, the very short deliberation time of the jurors combined with this statement from a random individual, could lead a prudent person to conclude that there was a significant community bias against the defendant.

5) Hostile Venue:

The defendant also states that Rooks County was a hostile venue, in which to try this case, and that such hostility affected the outcome of the trial.

- a) An ethical complaint was filed against the District Court Magistrate Bigge, with the Judicial counsel and he signed a private cease and desist order concerning his involvement in the above captioned case.
- b) An ethical complaint was filed against the County Attorney for her actions in involving the District Court Magistrate Judge in the above captioned matter, that complaint is still pending.
- c) The Clerk of the District Court, was consulting the County Attorney as to whether certain jurors should be excused from the jury list. This was improper and the defendant's attorney would never have been aware of this practice, but for an inadvertent comment

trial, the misconduct to the jurors, and for the other cumulative reasons stated herein that the Court grant the defendant's motion for a new trial.

Prepared by:



Cheryl A. Stewart, Esq.
Attorney for the Defendant

Certificate of Service:

I certify that a true and correct copy of the motion was served upon Danielle Muir, Rooks County Attorney by eflex filing on the 18th day of December, 2017.



Cheryl A. Stewart, Esq.

EXHIBIT-11-

AFFIDAVIT

I Joey Eubanks, wanted to set the record straight. I was young and mad at my uncle Wayne Clements when I told my teacher Shane Austin that my uncle had crossed the line,

I also told the Stockton cops Don Earl and Adam Bryant that I lied about Wayne and said the things I did because I was mad.

The Stockton officers told me if I changed my statement that they would arrest and charge me and I would go to jail.

I also told the Rooks County Attorney Danielle Muir that I had lied because I was mad at my uncle wayne.

The truth is I was not around my uncle Wayne in the summer of 2014, I was in a cinc case with my mother that summer in Russell " your welcome to verify this fact" Me and my Grandmother Hazel had no car so there was no way we could have been in Stockton that summer. I didn't see my uncle Wayne until the later part of August when he helped us move some stuff over to the house on Spruce st. in stockton.

I stated these facts at my uncles sentencing and trial but no one would lisen to me.

Now that I'm older I wanted to set the record straight, I said that me and my uncle had sex because I was young and I thought I was in love with and older boy. That I was told to stay away from by a Rooks County Judge but I didn't lisen and my uncle found out and threatened to tell my Grandmother if I didn't stop.

I didn't think this would happen to my uncle. I thought that he would get a slap on the wrist and I would get him out of the way so I could date that older boy. It all just got out of control.

When I tried to come clean with the truth the Stockton officers and Ms. Muir threatened me with jail and detention for a long time. Which scared me I didn't want to go to jail. So I did as I was told to do by the officers and Danielle Muir, I said that me and my uncle had a sexual relationship as they requested.

The fact is there is no way that me and my uncle were having sex in the summer of 2014, because I was a virgin until December of 2014. So I'm going to say this one more time me and my uncle Wayne Clements did not have sex ever.

As I stated I just wanted to try and set the record straight and I'm tring to do the right thing because my uncle shouldn't be in jail. I made this affidavit of my own free will, I made this statement to make sure the Affidavit I made on 3-27-2019 was more clear and understandably as to what I ment in it.

Thanks

Respectfully,

Joey Eubanks day 11 of 12, 19

12-11-19



Donna Romme