

Docket No. 12-1672

United States Court of Appeals
For the Seventh Circuit

Robert Dietrich,

Petitioner-Appellant,

v.

Judy Smith,

Respondent-Appellee.

Appeal from an order denying the appellant's 28 U.S.C. § 2254 petition,
the Hon. William Callahan, Magistrate Judge, presiding
District Court No. 11-C-117

Brief and Short Appendix of the Appellant, Robert Dietrich

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No. **12-1672**

Short Caption: **Dietrich v. Smith**

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Robert Dietrich

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Jurisdictional Statement

A. The District Court had jurisdiction over the matter pursuant to 28 U.S.C. §2253 in that it is an appeal from an order denying a petition filed pursuant to 28 U.S.C. §2254. On February 23, 2012 the United States District Court issued a certificate of appealability as to the issue of whether Dietrich's due process rights were violated by the trial court's failure to conduct an in camera review of B.T.'s mental health records and thereafter to provide any of such records to Dietrich prior to sentencing.

B. The order denying Dietrich's petition was entered on February 23, 2012. Dietrich filed a notice of appeal on March 22, 2012; and, therefore, the appeal is timely.

D. The appeal is from a final judgment denying the appellant's petition for habeas corpus and, therefore, the appeal is from a final judgment that disposes of all parties' claims.

Statement of the Issues Presented for Review

I. Whether Dietrich's due process rights were violated by the state trial court's failure to conduct an in camera review of B.T.'s mental health records, and thereafter to provide any relevant records to Dietrich prior to sentencing; where the court, at sentencing, permitted B.T.'s therapist to address the court concerning the psychological trauma that Dietrich's offense caused to the victim.

Answered by the district court: No

Statement of the Case

The petitioner-appellant, Robert J. Dietrich (hereinafter referred to as "Dietrich") was charged in a criminal complaint filed in Milwaukee County Circuit Court with first degree sexual assault of a child (repeated acts) contrary to Sec. 948.025(1), Stats., and with two counts of intimidation of a victim contrary to Sec. 940.44, Stats. (Doc:5-1) After waiving the preliminary hearing, Dietrich entered not guilty pleas to all counts.

The criminal complaint alleged that between June 1, 2004 and October 31, 2004 Dietrich had sexual contact with B.T., who was born on August 27, 1991 (i.e. B.T. was at all relevant times under the age of sixteen years)

During trial preparation, Dietrich filed a motion to obtain access to B.T.'s therapy records. Dietrich argued that the therapy records were

necessary for his defense because the acts were alleged to have occurred in 2004, but B.T. did not report the incidents until 2006. Dietrich offered evidence that there was good reason to believe that, during the entire time B.T. was in therapy, she never reported any of the incidents to her therapist.

The State responded by arguing:

We don't object that if the victim takes the stand-- or when the victim takes the stand, if she testified that she told the counselor that she was seeing the Mary person who she refers to in the phone call or any other counselor that she said that she -- if she testifies that she told this person, *then counsel should be able to cross-examine her as to where the proof is that she told her or may at that time then those medical records would be made available to show an inconsistent statement. The State wouldn't have a problem with that.* (emphasis provided)

(Doc. 5-14:8, 9).¹

Later during the hearing the trial court stated:

THE COURT: Okay. But conversely as the State acknowledged, that if she (B.T.) testified differently or said, yeah, I talked about it to my counselor not only in 2006, but going back to 2004, and every week or however often she visited, that that would-- that would pierce it (physician-patient privilege) right about there and would open the door to the admission or potential admission of those records. Correct:

MR. JENSEN: I would think so.

THE COURT: Yeah. *I would agree.*

MS PAULSON: And the State agrees.

¹ In other words, and as will be developed later in this brief, the State acknowledged that if B.T. were to put her mental status in question, then the State would be obligated to turn the treatment records over to Dietrich. As the following quotation from the trial judge demonstrates, the judge agreed.

(Doc. 5-14:29)

Thereafter, the trial court denied Dietrich's motion. (Doc. 17)

Dietrich later reached a plea agreement with the state under which the state agreed to amend count one to first degree sexual assault (without the repeated acts allegation) and to dismiss the remaining counts of intimidation of a victim. (Doc. 5-19:2) The state agreed to recommend ten years initial confinement in the Wisconsin State Prison with the length of extended supervision to be left to the discretion of the court. *Id.* Dietrich then entered a guilty plea to the amended charge.

At sentencing Dietrich presented a report of Dr. Michael Kotkin. Kotkin's report established that, after personally evaluating Dietrich, Kotkin formed the opinion that Dietrich's behavior with B.T. was an aberration- that Dietrich showed no proclivity toward pedophilia, and that Dietrich did not pose a risk to reoffend. This report was served on the state and on the court prior to the sentencing hearing.

Thereafter, without any prior notice, the prosecutor informed the court that B.T.'s therapist, Mary Determan, indeed intended to address the court. Dietrich objected on the grounds that he had no prior notice that such evidence would be presented, that he (Dietrich) had attempted to get B.T.'s therapy records earlier in the case and had been denied and, therefore, he was not in a position to evaluate the reliability of Determan's opinions.

The trial court overruled Dietrich's objection, and permitted Determan to address the court.

Thereafter, the court sentenced Dietrich to thirteen years initial confinement and ten years extended supervision. (Doc. 5-1)

Dietrich timely filed a notice of intent to pursue postconviction relief. After some extensions of time, Dietrich then filed a postconviction motion asking the court to vacate his sentence, and to order resentencing. Dietrich made three arguments: (1) he asked the court to order B.T.'s mother to sign a release for B.T.'s therapy records so that Dietrich could properly prepare to rebut Determan's sentencing opinions; or, in the alternative, (2) To strike Determan's comments from the record; and, (3) The court failed to establish on the record a nexus between the factors considered and the sentence imposed. *Id.*

Once again, the trial court issued a memorandum decision denying Dietrich's motion in all respects.

Dietrich timely filed a notice of appeal to the Wisconsin Court of Appeals. The Court of Appeals issued an opinion that affirmed the trial court in all respects. Regarding Dietrich's claim that his due process rights were violated when the court permitted B.T.'s therapist to address the court, the Court of Appeals found that Dietrich was on notice that the therapist would address the court because this was mentioned in the presentence investigation report. The Court of Appeals also denied Dietrich's claim that his due process rights were violated because he was never given access to B.T.'s health care records- even after the sentencing hearing, where the prosecutor told the trial court that the privilege had been waived by B.T.'s mother and a "HPPA" release had been signed. On

this point, the Court of Appeals found that Dietrich did not meet his burden of demonstrating that the records contained information helpful to the defense .

Dietrich petitioned the Wisconsin Supreme Court to Review the matter. The petition was denied.

Dietrich then petitioned the United States District Court (ED-Wis), for habeas corpus relief. On February 23, 2012, the court issued a memorandum decision denying Dietrich's petition.

Statement of the Facts

At sentencing the State called upon Mary Determan, who told the court she was B.T.'s therapist, to make comments concerning the effect of the incident on B.T.. Dietrich objected on the grounds that he had previously attempted to obtain B.T.'s records and his motion had been denied. (Doc: 5-20:20) Dietrich's attorney told the court:

I don't think it's fair to rely on the privilege at that point [the earlier effort to get the records] and now come in today without me ever having seen these health care records and have the therapist start talking about what's going on in treatment with [B.T.]. I just don't think that's fair. I have no way to challenge it or rebut it or do anything.

Id. Nonetheless, the court once again overruled Dietrich's objection and allowed Determan to offer her opinions. Only then did the prosecutor tell the court, "And, Your Honor, I should also make mention on the record that there has been a waiver-- so there's not any HIPPA violation by both Ms. T., [B.T.], and Ms. [L.T.] as well." (Doc: 5-20:22).

Thereafter, Determan told the court:

B.T. has continued to describe to me how she's reminded of the abuse in many different ways and at all different times. These episodes cause her to experience anxiety, and she fears that her feelings will be out of control. She's had nightmares and periods of time when she's afraid to go to sleep. She has also experienced daytime flashbacks, which come at unpredictable times and have impacted her schooling . . . (Doc: 5-20:23)

* * *

When B.T. acknowledged for the first time at the age of fourteen that she had been sexually abused at the age of twelve by a family friend, she was admitted inpatient at Rogers Memorial Hospital for a week. She had previously had two past inpatient stays at Aurora Psychiatric Hospital that year for suicidal ideation and self-mutilization . . . (Doc: 5-20:24) . . . (emphasis provided)

Most significantly, she failed her freshman year in high school. Her failure was directly related to psychological and behavioral problems stemming from the unreported sexual abuse. . . . (Doc: 5-20: 25)

Plainly, Determan was employed as a vehicle to put B.T.'s statements about the cause of her bad behavior before the court. In other words, B.T. placed her mental condition-- and the cause of it-- in issue in this case.

In sentencing Dietrich, the court relied heavily on Determan's opinions. Specifically, the court rejected Dietrich's mitigating version of the offense by speaking ironically as follows:

I have your version that talks about, if you will, an affectionate,

promiscuous, encouraging, curious and interested 12 year-old who initiated sexual contact because of a crush, amorous feelings toward you *who then after engaging in this behavior undertook a course of self-destruction wherein she mutilated herself, tried to kill herself, and generally allowed her life to spiral out of control . . "*

(Doc. 5-21:14).

Finally, having recited the sentencing factors the court considered, the court said:

After looking at all those factors this court does not believe this is not a probationary case. Therefore, after considering all the factors the court is required to consider . . .I'm going to impose 20 years in the State prison system with regards to this matter. That will be broken down to 13 years of initial confinement and seven years of extended supervision.

The court offered no explanation as to why the sentencing factors considered by the court required thirteen years of initial confinement despite the fact that the defendant recommended four years, the presentence investigation report recommended six to seven years, and the prosecutor recommended ten years.

Summary of the Argument

The state court, in sentencing Dietrich, specifically found that his crime was serious because it had caused B.T. significant mental health problems. This was based wholly on the opinions of B.T.'s therapist, Mary Determan.

When Dietrich learned that Dieterman would be allowed to address

the court at sentencing, he objected because he had earlier been denied access to B.T.'s treatment records. At sentencing, the prosecutor informed the court that B.T. and her mother had signed a release (i.e. waived any confidentiality concerns). Nonetheless, the court overruled Dietrich's objection, and denied his later request for access to the records.

The district court found no due process violation in the state court's denial of Dietrich's demand for access to the treatment records; and consequently, found that Dietrich had not shown that he was sentenced on the basis of inaccurate information. In reaching this conclusion, though, the district court drew an unwarranted distinction between *opinion* information and *factual* information. The federal cases addressing the due process right to be sentenced on the basis of accurate *information* draw no such distinction. Thus, the denial of Dietrich's request for access to the therapy records, at least in the form of an *in camera* examination, was based on an unreasonable application of federal due process law.

Additionally, Dietrich made a sufficient showing that the therapist's opinions were not based on reliable underlying data and observations. The evidence in the record suggested that, during the court of treatment, B.T. never attributed her problems to the incident with Dietrich. Rather, B.T. attributed her problems to issues at home and in school.

For these reasons, Dietrich's sentence violates the due process clause. The *process* was not fair, because the state put B.T.'s mental

health status in issue at sentencing, but denied Dietrich the opportunity to rebut the therapist's opinions. And, further, there is good reason to believe that the therapist's opinions, which were relied upon by the sentencing judge, were not based on reliable underlying data and observations.

Argument

I. Dietrich was denied due process at sentencing because: (1) the sentence was based upon therapist opinions that are probably invalid; and, (2) the process was unfair in that Dietrich was improperly denied access to B.T.'s therapy records.

A. Standard of Appellate Review

The standard of appellate review is whether, in denying Dietrich's claim of constitutional error, the state court made "an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

As will be set forth in more detail below, though, the state court's-- and the district court's-- application of clearly-established due process law was unreasonable.

B. For the purposes of due process, it makes no difference whether it is a “fact” that is inaccurate, or whether it is an expert “opinion” that is unfounded; due process requires that a sentence be based on accurate information.

The due process law governing sentencing information is well-settled. The Supreme Court has held that convicted defendants have a due process right to be sentenced on the basis of accurate information. *United States v. Tucker*, 404 U.S. 443, 447, 30 L. Ed. 2d 592, 92 S. Ct. 589 (1972) *superseded by statute on a different point*; *Townsend v. Burke*, 334 U.S. 736, 741, 92 L. Ed. 1690, 68 S. Ct. 1252 (1948). The foundation of that right is the due process protection against arbitrary government decisions. A convicted offender does not have a constitutional right to a particular sentence available within a range of alternatives, but the offender does have a right to a fair sentencing process -- one in which the court goes through a rational procedure of selecting a sentence based on relevant considerations and accurate information. “Under *Townsend* and *Tucker*, a sentence must be set aside where the defendant can show that false information was part of the basis for the sentence. The two elements of that showing are, first, that information before the sentencing court was inaccurate, and second, that the sentencing court relied on the misinformation in passing sentence.” *United States ex rel. Welch v. Lane*, 738 F.2d 863, 865 (7th Cir. Ill. 1984) It is important to emphasize here that the Supreme Court did not limit

its holding to any particular form of *information*.

Here, though, in denying Dietrich's petition for habeas corpus, the district court found it significant that what is at issue here is the validity of the *opinion* of the therapist, rather than the accuracy of some fact, the truth of which is readily ascertainable. The district court wrote, "First of all, Dietrich has not demonstrated that the sentencing court was provided, much less relied upon, any incorrect factual information at the time of sentencing. Instead, the court was provided with Determan's opinion about the impact Dietrich's actions had on B.T.'s mental health." (Doc. 14-14)

From there, the district court concluded²:

[R]itchie does not require that confidential information be provided merely for the purpose of cross-examining an unfavorable witness. "The ability to question adverse witnesses . . . does not include the power to require the pretrial disclosure of any and all information that might be useful in contradicting unfavorable testimony." *Ritchie*, 480 U.S. at 53. And that is precisely the purpose for which Dietrich sought B.T.'s mental health records. He wanted to see whether Determan's opinion of how Dietrich's assault of B.T. affected her mental condition was supported by the content of those records, i.e., what B.T. said to Determan during her therapy

² The district court relied heavily on *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987). Dietrich, though, believes that the holding in *Ritchie* only confuses the issue. Both *Ritchie*, and a Seventh Circuit case relying upon *Ritchie*, *Rizzo v. Smith*, 528 F.3d 501 (7th Cir. 2008) were cases that involved the defendant's pretrial right to access privileged records. Both cases acknowledged that, in order to reverse the trial court's determination that the defendant not be given access, the appellant was required to establish that the information contained in the records would "change the outcome of the defendant's trial." Both cases discuss the fact that information that is contained in the records which is inconsistent with trial testimony (i.e. would be good fodder for cross-examination) cannot be the sort of fact that would change the outcome of a trial. That is a very different standard than what Dietrich is faced with here. Dietrich need only demonstrate that, in sentencing him, the judge relied upon inaccurate information.

sessions. Simply stated, the information that he was seeking was not “exculpatory” as *Ritchie* required it to be in order for due process to require its disclosure.

(Doc. 14-16, 17).

This is an unreasonable application of clearly-established federal constitutional law because the governing law draws no distinction between “factual information” and “opinion information.” In fact, a good part of the information that a court relies upon in sentencing a defendant is not factual in nature. For example, the judge will rely upon the opinion of the presentence investigator as to whether the defendant has accepted responsibility for his crime, and whether he has expressed remorse. The judge will rely on the opinion of many persons as to the seriousness of the crime that was committed. Surely, the United States Supreme Court, in *Tucker* the court did not intend to limit its holding to only the sort of facts that the truth of which is readily ascertainable; for, in describing the sort of *information* that a judge may consider at sentencing, the court observed that, “It is also true that before making that [sentencing] determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come.”

Tucker, 404 U.S. at 446.

Thus, there is no basis in the law to draw a distinction between inaccurate factual information, and unfounded opinion information.

This being the case, the question becomes whether Dietrich made a sufficient showing that B.T.’s therapy records were likely to contain

information that would seriously undermine the reliability of the therapists's opinions.

Here, Dietrich made a pretrial motion to obtain access to the therapy records. In that motion, he established that the police reports in this case alleged that the St. Francis Police "were aware of [B.T.'s] history of suicide." In a tape-recorded conversation between B.T. and Dietrich (recorded in July, 2006), orchestrated by police detectives, B.T. told Dietrich that her counselor advised her to talk to the person with whom she had "sexual contact." Elsewhere in the police reports it is indicated that B.T. was currently in counseling and that, following the suicide attempt, she was in the hospital for one week.

As part of the pretrial investigation Dietrich filed an open records request for any police involvement in an attempted suicide by B.T.. The St. Francis Police Department did not respond to the records request until Friday, March 9, 2007, when the police provided a narrative report, believed to pertain to B.T., in which she told police detectives that she harmed herself because she was depressed over her mean friends at school; and, further, that these people were accusing her of writing a bomb threat in the girls bathroom at school. In this interview with police, B.T. said nothing about being sexually assaulted by Dietrich.

All of this, of course, casts considerable doubt on the validity of Determan's "opinion" that it was Dietrich's sexual assault of B.T. that caused B.T.'s psychological problems. Although she was in counseling for a considerable period, and she apparently did suffer from mental

problems, it does not appear that B.T. ever attributed her mental problems to the sexual contact she had with Dietrich.

Plainly, then, there is good reason to question the validity of Determan's opinion. As such, due process demands that Dietrich have access to the information that informed Determan's opinion.

All of this aside, it is also important to understand that it was the State that placed B.T.'s mental status in issue at sentencing³, and then presented an expert witness to comment on B.T.'s mental status. This, almost more than anything, demonstrates how utterly inapplicable *Ritchie* is to this case. In *Ritchie*, the prosecution did not put the victim's mental status in issue at the trial.

Recall that both the prosecutor and the judge agreed that if B.T. took the stand and claimed that her mental problems were due to the abuse by Dietrich, then he would be entitled to access to the records. This is precisely what occurred at the sentencing hearing, except that B.T.'s claims were presented through the comments of the therapist rather than by B.T. herself.

Nonetheless, the court denied Dietrich access to the therapy records at the time of sentencing.

There is one final point here. Granted, the Federal Rules of Evidence are not constitutional law, and they do not apply at a sentencing hearing, but a consideration of Rule 702 is instructive in considering whether it was "fair" to permit Determan to offer her opinions without being

³ By placing her mental status in issue, the State arguably waived the physician-patient privilege

required to set forth the facts and data underlying her opinion. Rule 702⁴, provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) *the testimony is based on sufficient facts or data;*

(c) *the testimony is the product of reliable principles and methods; and*

(d) *the expert has reliably applied the principles and methods to the facts of the case.*

At trial, then, an expert would not even be allowed to offer an opinion without also presenting the underlying data and facts. This law recognizes that it is utterly impossible to evaluate the validity of an opinion without the underlying data. This principle is no less true where the opinion is offered at the time of sentencing. How is the court to evaluate the reliability of Determan's opinions without access to B.T.'s therapy records, which would provide the requisite foundation for the opinions?

C. Dietrich's showing, then, at the very least should have triggered an *in camera* examination of B.T.'s treatment records.

There are at least two solid reasons that Dietrich's showing should have, at the very least, triggered an *in camera* examination of B.T.'s treatment records.

⁴ The parallel Wisconsin Rule of Evidence, Sec. 907.02, Stats., is nearly identical

Firstly, the State put B.T.'s mental health status in issue at sentencing and, as both the prosecutor and the judge acknowledged, if that occurred, then Dietrich would be entitled to examination of the records. At the sentencing hearing, the prosecutor specifically announced that there was no HIPPA violation because all the necessary releases were signed. How can it be fair that B.T. releases her records to the state but not to Dietrich? How can it be fair for the state to be able to review those records, and to then cherry-pick those facts and opinions that appear to support the state's theory that Dietrich's crime caused B.T.'s mental problems?

Secondly, even if there was no specific waiver of confidentiality, Dietrich's proffer was sufficient, under principles of due process and of public policy, to trigger this minimal incursion into the privacy considerations attached to B.T.s mental health care records. The state argued to the court that Dietrich's crime was serious because it had caused B.T. significant mental health problems. Other evidence is the case, though, suggests that B.T.'s mental health problems had a number of other causes, including a broken home and difficulties at school. There is also good reason to believe that B.T. never attributed her problems to the encounter with Dietrich.

For these reasons, at the very least, the court should have conducted an *in camera* review of B.T.'s therapy records.

D. The Determan's opinion certainly swayed the court even the judge claimed not to have considered it.

The district court also held that even if Dietrich should have been granted access to B.T.'s mental health records, the error was harmless because the sentencing judge did not rely on upon B.T.'s psychological condition in sentencing Dietrich. The district court wrote:

The trial court's decision makes clear that it did not place any material weight on Determan's comments at sentencing. Thus, even assuming that the trial court should have conducted an in camera review of B.T.'s mental health records, it is clear that Dietrich was not prejudiced by the court's failure to do so. In other words, there was nothing in those records that would have "affect[ed] the outcome of the [sentencing]." *Rizzo*, 528 F.3d at 505. Accordingly, the state court cannot be said to have violated Dietrich's due process rights as discussed in *Ritchie*.

(Doc. 14-18)

But, in this case, here is what the trial court said about the psychological damage caused to B.T.:

[The court looks at] the letters as submitted by B.T. and B.T.'s family and friends as well that also talk about . . . the impact that this event from their assessment has had on B.T. but also bespeaks of the impact that this event has had on their lives (Doc. 5-21:8)

* * *

I have your version that talks about, if you will, an affectionate, promiscuous, encouraging, curious and interested 12 year-old who initiated sexual contact because of a crush, amorous feelings toward you who then *after engaging in this behavior undertook a course of self-destruction wherein she mutilated herself, tried to kill herself, and generally allowed*

her life to spiral out of control . . "
(Doc. 5-21:14).

In reaching the conclusion that Dietrich's crime was very serious the trial court accepted Determan's opinion that B.T.'s course of self-destruction was *caused by Dietrich's crime*. This is the very crux of Determan's opinion. Even more importantly, this is the opinion that would be undermined by access to the records. For the reasons outlined above, it is a virtual certainty that B.T.'s treatment records make no reference to the sexual assault until *after* Dietrich was charged.⁵

The error here was not harmless. Perhaps the most significant sentencing factor to the court was the alleged psychological damage that was caused to B.T..

Conclusion

For these reasons it is respectfully requested that the court find that Dietrich's detention is in violation of the fifth amendment to the United States Constitution and to order that Dietrich be released.

⁵ By way of background, the court should be aware of the circumstances of B.T.'s "disclosure" of the sexual encounter with Dietrich. While still a juvenile, B.T. was detained by the police when she was found having sex in the backseat of a car. During her rather pointed interrogation by a police detective-- which was video recorded-- B.T. rather flippantly announced that she had had sex "with a cop." The interrogator then pursued the issue with B.T.

Dated at Milwaukee, Wisconsin, this 12th day of June, 2012:

LAW OFFICES OF JEFFREY W. JENSEN
Attorneys for Appellant
/s/ Jeffrey W. Jensen

Certification as to Form and Length

The undersigned hereby certifies that this brief meets the length and format requirements of Fed. R. App. P. 32(a)(7). A fourteen point "Georgia" font was used with justification and automatic hyphenation. The length of the brief is 4556 words not counting the table of authority and table of contents. The word count was determined using the word count function of the word processing software *Google Docs*.

Dated at Milwaukee, Wisconsin, this 12th day of June, 2012:

LAW OFFICES OF JEFFREY W. JENSEN
Attorneys for Appellant
/s/ Jeffrey W. Jensen

Circuit Rule 31(e) Statement

An electronic copy of this brief consisting of digital media has been uploaded to the Seventh Circuit Court of Appeals Legal Brief System. I certify that the file does not contain a computer virus. I additionally certify that, pursuant to Circuit Rule 31(e)(4), a digital copy of the brief has been served upon each party individually represented by counsel.

Dated at Milwaukee, Wisconsin, this 12th day of June, 2012:

LAW OFFICES OF JEFFREY W. JENSEN
Attorneys for Appellant
/s/ Jeffrey W. Jensen

Circuit Rule 30(d) Statement

All materials required by Circuit Rule 30(a) and (b) are included in the attached appendix.

Dated at Milwaukee, Wisconsin, this 12th day of June, 2012:

LAW OFFICES OF JEFFREY W. JENSEN
Attorneys for Appellant
/s/ Jeffrey W. Jensen

Certificate of Service

I hereby certify that on June 12, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

(For paper copy of the brief only) Fifteen copies of this brief are being served and filed at the Clerk of Court Office, United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn Street, Chicago, Illinois on _____ by placing the same in the United States Mail. Two copies of this brief are being served on Aaron R. O’Niell, Asst. Attorney

General, by placing the same in the United States Mail.

Dated at Milwaukee, Wisconsin, this 12th day of June, 2012:

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Docket No. 12-1672

United States Court of Appeals
For the Seventh Circuit

Robert Dietrich,

Petitioner-Appellant,

v.

Judy Smith,

Respondent-Appellee.

Short Appendix of the Appellant, Robert Dietrich

- A. Opinion of the Wisconsin Court of Appeals
- B. Petition pursuant to 28 U.S.C. §2254
- C. Memorandum Decision of District Court
- D. Docket Entries