

## Wisconsin Awards Maxwell J. Verkuilen \$15,417 Compensation For 3 Years Wrongful Imprisonment For Sexual Assault

Maxwell J. Verkuilen has [been awarded](#) \$15,416.76 compensation by the State of Wisconsin for three years and one month of wrongful imprisonment for sexual assault. The award came more seven years after his exoneration in August 2007.

On June 10, 2002 the 25-year-old Verkuilen was at a bar with friends in Appleton, Wisconsin. Erin Schubert introduced herself to him at the bar, and she asked him for a ride when he left in the early morning of June 11. The two went to the house where he rented a room from his sister and her husband. After Verkuilen and Schubert watched television for a while they went upstairs to his bedroom where they engaged in sexual intercourse and then slept. The next morning Schubert declined an invitation from Verkuilen's sister to stay for breakfast and she gave him her phone number. Schubert didn't indicate to Verkuilen's sister or her husband that anything was out of the ordinary.

Sometime after arriving home in nearby Kaukauna, Schubert notified the police and accused Verkuilen of sexually assaulting her in his bedroom.

Verkuilen was arrested on June 12 and two days later he was charged with two counts of 3<sup>rd</sup> degree sexual assault. Because of his arrest, his probation for a previous misdemeanor conviction was revoked and converted to nine months in jail.

A private attorney was hired by Verkuilen's father. However, after his father's sudden death Verkuilen requested a public defender, and in January 2003 he was assigned attorney Joseph M. Norby.

During Verkuilen's trial in Outagamie County Circuit Court, the prosecution's case was based on Schubert's testimony and the expert testimony of Jean Coopman — a registered nurse and Sexual Assault Nurse Examiner (SANE) — who examined Schubert after she made her complaint. Coopman testified Schubert had "injuries" consistent with non-consensual sex.

Verkuilen's defense was based on his testimony that he and Schubert had consensual sex after she asked him for a ride from the bar



Maxwell J. Verkuilen  
(Facebook.com)

and she willingly went upstairs to his bedroom. He also testified she spent the night with him and left in the morning after giving him her phone number.

The jury convicted Verkuilen of both counts on August 27, 2003. Norby withdrew as Verkuilen's lawyer in October 2003. On February 23, 2004 Verkuilen was sentenced to serve four years imprisonment to be followed by six years probation.\* The same day his lawyer filed a notice of intent to pursue post-conviction relief.

On January 19, 2005 Verkuilen filed a timely post-conviction motion for a new trial that included nine issues: One of those issues was his lawyer Norby provided ineffective assistance of counsel for reasons that included: He failed to investigate and present expert medical evidence to rebut Coopman's [testimony about](#) "the ultimate issue the jury was to determine—whether the sexual encounter was consensual, or forced."; and he failed to call as witnesses Verkuilen's friends who were present at the bar where Schubert introduced herself, and his sister and brother-in-law who were home when the assault allegedly took place.

Verkuilen was granted an evidentiary hearing. During the hearing he presented expert medical testimony from Maureen Van Dinter, a nurse practitioner whose teaching duties at the University of Wisconsin School of Medicine include instruction about the proper method for performing sexual assault examinations. Van Dinter testified about major inconsistencies related to her review of the case file and Coopman and Schubert's testimony. One inconsistency was Schubert testified she had significant vaginal bleeding when she didn't report that on her pre-exam form, Coopman did not document any bleeding, and there was no blood on her vaginal swab.

Van Dinter also testified about alternate explanations for some of Schubert's "injuries," that they could have resulted from consensual sex, and there was no way to determine [to any degree](#) of scientific certainty they were due to nonconsensual sex.

After the hearing, the trial court denied Verkuilen's petition on June 16, 2006.

Verkuilen appealed to the Wisconsin Court of Appeals. Verkuilen [asserted that](#) Norby

did not even bother to "crack open a book" to prepare his case.

On January 27, 2007 the Court of Appeals reversed Verkuilen's conviction based on ineffective assistance of his trial counsel. The Court [stated in](#) *State v. Verkuilen*, 299 Wis. 2d 782, 728 N.W.2d 373 (Wis. Ct of Appeals, 3rd Dist., 1-23-2007):

... the failure to call an expert to rebut Coopman effectively stripped Verkuilen of any defense. Coopman essentially rendered impossible Verkuilen's claim the sex was consensual. An expert witness such as Van Dinter, who could testify there might be another explanation for the injuries ... would have at least offered the jury an alternate scientific or medical basis for acquittal. Counsel's failure to find such an expert essentially conceded the case before Verkuilen ever took the stand. [¶16]

This is not a case of mere witness credibility, .... Rather, we have a case where an expert's testimony, unchallenged by the defense, essentially allowed the State to scientifically "prove" its complaining witness was telling the truth. This is deficient performance.[¶17]

... the failure to rebut Coopman's testimony, in light of the knowledge that she would testify the sex was nonconsensual, was enough of an error to undermine our confidence in the result. Accordingly, we must reverse for a new trial, and we do so on that ground. [¶18]

Two weeks after the appeals court's ruling Verkuilen was released on \$5,000 bond on February 5, 2007. He had been in custody for 4-2/3 years after his arrest on June 12, 2002.

After the case was remanded to the Outagamie County Circuit Court for a retrial, Verkuilen's motion was granted requiring Schubert to sign releases for her medical and mental health records prior to the date of the alleged offenses. However, Schubert refused to sign the releases, and on August 15, 2007 the judge [signed an order](#) barring her testimony during a retrial. The DA's Office then filed a motion to dismiss the charges which was granted on August 20, 2007.

On November 5, 2008 Verkuilen filed a legal malpractice lawsuit against his trial attorney Norby.

The case went to trial, and the jury heard testimony from two expert medical witnesses rebutting Coopman's trial testimony.

**Verkuilen cont. on page 10**

## High Fence Foodie Cookbook Now Available !!!

**H**igh Fence Foodie is [a new cookbook](#) by Texas prisoner Celeste Johnson that was recently published by The Justice Institute.

High Fence Foodie has more than two hundred easy to prepare recipes for meals, soups, snacks, desserts, and beverages. These recipes can be made from basic items a prisoner can purchase from their unit's commissary, or people on the outside can purchase from a convenience or grocery store. They are written by Celeste Johnson, a woman imprisoned in Texas who loves to cook and try out new combinations of the simple food ingredients available to her.

[Click here for more information](#) about the book's contents and to order it from Justice Denied with no shipping charge.

[Click here to buy High Fence Foodie from Amazon.com.](#)

High Fence Foodie's all new recipes are a

follow-up to the more than 200 recipes in *From The Big House To Your House* that was written by Celeste Johnson and five fellow prisoners at the Mountain View Unit, a woman's prison in Gatesville, Texas.

*From The Big House To Your House* received rave reviews on Amazon.com, with 75% of reviewers giving it 4 or 5 stars! Some of the comments are:

"A lot of the recipes are very imaginative, and fun to make. Well worth the money." J.C.

"I loved the food and was inspired by the can-do attitude of the ladies involved with this project." Dan

"My daughter got this for her husband for father's day. He loves using it!!" J.H.

"I am a college student making a limited income and these recipes are great and fulfilling for people like me who don't have a ton of \$ to spend on groceries." Alicia



"I sent this to my daughter. She absolutely loves this little cookbook!" D. G.

High Fence Foodie continues the high standard of *From The Big House To Your House*!

Celeste hopes her recipes will ignite a reader's taste buds as well as spark their imagination to explore unlimited creations of their own! She encourages substitutions to a reader's individual tastes or availability of ingredients.

She is confident users of her recipes will enjoy creating a home-felt comfort whether behind the High Fence, or at Your House!

Celeste Johnson does not financially profit from sales of *High Fence Foodie*. All profits from the book's sale are donated to [The Justice Institute](#) Justice Denied to contribute to its work on behalf of wrongly convicted persons.



## Verkuilen cont. from page 9

ny. One of these witnesses was a SANE nurse who examined Schubert three days after the alleged assault and found no evidence of sexual assault. The jury also heard testimony from the persons with Verkuilen at the bar where Schubert introduced herself, and his brother-in-law and his sister who were both present in the residence when the alleged assault took place and who spoke with Schubert on the morning after the alleged assault. The jury heard no testimony the DA dismissed the charges after Schubert refused to release her medical and mental health records.

On February 3, 2010, the civil jury returned a special verdict finding by a preponderance of the evidence that Verkuilen was not guilty of sexually assaulting Schubert, and that Norby was guilty of legal malpractice. The jury awarded Verkuilen \$700,000. On March 10, 2010 Outagamie County Circuit Court Judge Philip M. Kirk signed [an Order](#) reducing the judgment to \$456,191.50.

Norby did not have malpractice insurance, and after the judgment he declared bankruptcy. Verkuilen's civil judgment was extinguished in 2010 without any payment by Norby.\*\*

Verkuilen then [filed a claim](#) for \$450,000 in compensation with the Wisconsin Claims Board. § 775.05 Wisconsin Stats. authorizes

a convicted innocent person to be compensated in an "amount which will equitably compensate the petitioner, not to exceed \$25,000 and at a rate of compensation not greater than \$5,000 per year for the imprisonment." The legislature can authorize the payment of money exceeding those amounts.

Verkuilen based the amount of his claim on the judgment in the civil case. He asserted the Public Defender's Office should not have allowed Norby to represent him without malpractice insurance. Verkuilen also claimed he lost work earnings of almost \$50,000 yearly, he had difficulty finding employment and housing after his release, he owed money borrowed to pay legal expenses, [and that](#) "his wrongful imprisonment was a traumatic experience and destroyed his relationships with several friends and family members."

The Outagamie County DA opposed the amount and the basis of Verkuilen's claim, [arguing he didn't](#) satisfy the statute's requirement of proving "he was innocent of the crime by clear and convincing evidence and that he did not, by his act or failure to act, contribute to the conviction and imprisonment."

On December 9 2014 the Board held a hearing concerning Verkuilen's claim. [It ruled](#) "that equitable principles justify an award in the amount of \$15,416.76 to compensate Mr.

Verkuilen for his three-year and one month imprisonment. In addition, the Board concludes that the compensation should include \$9,600 for Mr. Verkuilen's post-conviction legal fees challenging his original conviction." The total amount was \$25,016.76.

Verkuilen, now 37, received no compensation for the 1 year and 8 months he was incarcerated from his arrest to his sentencing.

Endnotes:

\* Verkuilen was sentenced to three years imprisonment and six years extended supervision on the first count, concurrent with four years' initial confinement and six years' extended supervision on the second count.

\*\* Joseph M. Norby continues to practice law in Appleton, and he is listed as a member in "Good Standing" by the Wisconsin Bar Association (website last visited January 5, 2015).

Source:

[State v. Verkuilen](#), 299 Wis. 2d 782, 728 N.W.2d 373 (Wis. Ct of Appeals, 3rd Dist., 1-23-2007)

[Maxwell Verkuilen](#), By Board Granting Compensation, Wisconsin State Claims Board, December 9, 2014

[Ex-prisoner gets \\$25,000 for wrongful imprisonment](#), MacroInsider.com, December 31, 2014

[Man found not guilty](#) by reason of mental defect, fdlreporter.com, August 6, 2014

[State v. Verkuilen](#), Docket for Appeal Number 2005AP001652 - CR, Wisconsin Court of Appeals District 3 (last visited 1-5-2015)

