

INCONSISTENCIES OF CONNIE VARGOVICH

State v. Donald Miller (Iron County, WI Case No. 97-CF-60)

• PRETRIAL INCONSISTENCIES

1. Just weeks before Don was accused here, Connie's mother also falsely accused her boyfriend, Jerry Aho, of coming to their residence and threatening to kill them all with a gun. Michigan police arrested Aho but determined that the Vargovich family accusations were inconsistent and that Aho did not own a gun. He was released. Shortly thereafter Connie accused her boyfriend, Don Miller, of threatening to kill her with a gun.
2. Just weeks prior to Don's arrest several persons (Kirk Selves, Alan Prezkop) heard Connie threaten she would make Don "pay" and "promise" he will "never have another girlfriend as long as he lives" if he ever decided to break off his relationship with her.
3. Connie made prior allegations against others, all of which claim physical injury, death threats, use of deadly weapons, fear for her life, or accusations of rape; and even as Don sat in jail awaiting trial on her claims here, she had proceeded in the Michigan 98th District Court with complaints against Ken Grenfell, claiming that he told her he would "shoot up her house" within 72-hours unless arrested, and that her son may get hurt.
4. Connie's medical records were obtained for *in camera* review and indicate she had visited her personal physician a few weeks prior to accusing Don of rape and had told her doctor Don treated her so well she didn't know how to deal with it because, she said, she wasn't used to such good treatment from her boyfriends. But at trial she now claimed that Don had been abusive. Connie would have no reason whatsoever to lie to her personal physician, but falsely accusing Don Miller would be a reason to lie to a jury.
5. Connie's first contact with police at Miller's residence on the morning of October 19, 1997 culminated in Iron County Sheriff's Deputy Joe Robinson's refusal to honor her demands to arrest Miller, which he refused to do because complaints she gave him were allegations that Miller had 'bruised her thigh' 2-weeks earlier, 'broke her lantern mantle', and 'has guns in the house'. Deputy Robinson had found no probable cause for an arrest.
6. Later that day Connie went to the Iron County Sheriff's Department where they gave her a *multiple choice* domestic violence worksheet to fill out, along with which she submitted two statements—one concerning Oct. 8 and the other concerning Oct. 19—but neither one of these two handwritten statements alleged sexual assault. Her first written statement concerning Oct. 8th had instead actually denied there was any rape. She wrote:

*"[Don] was acting like he was going to rape me ...
after a few hours of me crying and begging him to stop, he stopped."*

7. In the *multiple choice* domestic violence worksheet she had filled out at the police department after failing to obtain Don's arrest earlier, Connie now simply circled nearly all suggested answers on that form, including claims that a 'knife', 'phone', and 'chair' were used as weapons against her; but never again in any subsequent statement or testimony, did she allege or mention any knife, chair, or phone used as a weapon.

8. The complaint that finally triggered Don's arrest was her new story that Don had pointed a red laser sighted pistol at her. She later told police Don "*has bomb making materials, drugs, and automatic weapons at his business*" in Michigan. Don was arrested and police in two states conducted searches of his home, business, and vehicles, but no 'red laser sighted gun' was found, nor were any 'bomb materials, drugs or fully automatic weapons' found anywhere. Right after these unproductive searches is when DA Lipske offered to drop *all* the charges in exchange for Don's plea to one lesser charge.

9. Later that same night Connie wrote another complaint which claims Dan Clemens called her by telephone at approx. 8 p.m. (seven hours after Don's arrest; eight hours after she wrote the statement denying rape). She claimed Clemens told her to 'stop lying' and told her 'Don would post bail and go home', and she told Clemens she hopes Don "*rots in jail*" then hung up. Believing Don would get out of jail she now *changed* her first written report from "*he stopped*" to: he "*didn't*" stop. So Connie's first claim of rape had appeared immediately after being told Don would be released from jail. She now wrote:

*"He wanted sex, I said no,
I was crying begging him to stop, he didn't."*

10. For sole purpose of gathering evidence for a sexual assault prosecution, Connie was sent to a Michigan hospital where she was examined by Dr. E. Lanny Robins. In her various complaints and testimonies Connie had claimed that the worst of her bruising was caused by a rape on Oct. 8, yet when the doctor examined that same bruising she did not tell him it had been caused by any Oct. 8 sexual assault—she only told the doctor she was sexually assaulted on Oct. 19. No mention of any Oct. 8 rape; that story came later.

11. On record at a pretrial hearing DA Lipske stated: "*There appears to be falsely accused information*" in Connie's prior police reports and claims she made against others.

12. In that *multiple choice* domestic violence worksheet she filled out at the police station after she had already once failed to obtain Don's arrest earlier, Connie also stated she was 'kicked', 'punched', 'scratched', and 'slapped' — but never again in any subsequent statements or testimony did she ever mention any such kicks, scratches, punches, or slaps. She had forgotten these aspects of her false story, just as she also forgot about her other false claims that a knife, chair, and telephone had been used as weapons.

13. Connie wrote in her first police report that "*Don fell asleep first, then so did I.*" But this statement would beg the question of why didn't she simply leave the house after Don had fallen asleep "first," so Connie simply changed her story yet once again and now wrote in her new revised police report: "*I fell asleep, I'm not sure if Don did.*"

14. While police were at Don's house prior to his arrest, then later that same day when she wrote her complaints at the police station, Connie never mentioned anything about her sister Michelle Vargovich having come to the house during any alleged assault. Only after Don told police that Connie's sister had been *inside* his home during the time Connie claimed she was being assaulted (and thus an eyewitness) did Connie add the sister to her story, and she had done so in her revised report (the 3rd version of her story).

- **UNDER OATH TESTIMONIAL INCONSISTENCIES**

15. Deputy Joe Robinson, the 'investigating' Iron County Sheriff's Deputy, during trial admitted there had been no investigation in this case prior to trial and the excuse he and the DA gave for this was that the deputy's shift had ended at 5:00 P.M., so he went home. No excuses were given as to why no other police bothered to investigate, or as to why there was no investigation any other day prior to a trial held 2-months after Don's arrest.

16. During trial Connie testified she had been prescribed psychotropic medications by her doctor, but admitted she had not been taking them during the time of the accusations.

17. In her prelim testimony Connie testified she was "*pushed*" down a hallway to the bedroom, that Don had a gun "*in there*", pointed it at her from a "*foot or two away*", then put the gun down. But her story at trial contradicted this prelim testimony as she now claimed she had been "*pulled*" to the bedroom, and that a gun had been held "*to*" her head, to her "*right temple*." And, as Connie admitted at trial, Don is right handed. A right handed person would have held a gun to her left temple, not to her right temple.

18. Connie's initial, then revised, police reports of Oct. 19 and 20 claims she had been thrown down in a hallway and that a gun was held to her head *there* in the hallway. Her prelim hearing testimony contradicts that, where she now claimed she was pushed onto a hallway floor, then pushed into the bedroom where "*he had a gun in there*", which was aimed at her from "*a foot or two away*". Her story had changed as to where a gun allegedly first appeared, where it was used, and as to how and when it was pointed at her.

19. Connie testified at the prelim hearing that, during her housewarming party on Oct. 18, she had left the house with her sister to get away from Don but claimed Don then followed her and her sister in his truck. She made it look as if she was trying to get away from Don, but that he had simply followed her after she left. But at trial Connie admitted that she did not leave with her sister, but *with Don* after her sister had already gone.

20. In her initial police report Connie claimed Don had convinced her to get into his truck in town and "*as soon as I shut the door*" he "*slammed her head*" into the window. But at trial she testified that this happened down the highway while on the way home.

21. Connie testified at the prelim hearing that Don had followed her around town the entire time she was there, calling her names, harassing her, and trying to get her into his truck. She testified she didn't want to go home with him so went to the Hurley Citgo and

used the payphones to call her mother "*first*", her friend _____ and her sister to find a ride to her mother or sister's house. She also testified as to which payphones she used, what phone numbers she dialed, claimed she had gone inside the Citgo to get change for additional calls, and claimed Don was still bothering her but convinced her to get into his truck, took her home and then assaulted her for hours, which assault, she said, was all over with by 4 A.M. But certified Ameritech telephone records for these Citgo payphones prove that *every bit* of her testimony regarding all this was entirely false.

22. The certified telephone records prove Connie never did call her mom first—and in fact never called her at all. They prove she did not call her friend _____, and that she did not call her sisters. The certified records prove she had not called any of these persons as she had falsely testified under oath she did, and also prove that she had in fact called *Don Miller* from these same payphones at 3:49 A.M. (asking him to come pick her up), which call she finally admitted during trial she had made.

23. The telephone records also prove Don was not in town harassing her or trying to get her into his truck, but that he was home, 8-miles away, while she used the payphones. The records also prove there could have been no assault of any kind from midnight, or any other time, until 4 A.M. as she had falsely testified under oath, because it is proven by these records and her own admissions that **she was in town at 3:49 A.M., calling Don Miller** so couldn't possibly have arrived back home until well *after* 4 A.M., which leaves no time for any assault she claimed had lasted for hours and then ended at 4 A.M.

24. Connie told the jury that food and water was thrown at her and that she recovered clothing in evidence from Don's house when she returned there with Deputy Robinson after Don's arrest on Sunday. She testified she had picked the clothing off the bathroom floor and gave them to Robinson, who bagged and tagged them. But Deputy Robinson took the stand and testified that he had recovered *no* clothing whatsoever from Don's house, but that Connie had brought them to a police station in Ironwood, MI on Monday, a day after Don's arrest. The clothing had not come from Don's house on Sunday as Connie had falsely testified, but on Monday and from her mother's house in Michigan where she was staying.

25. Connie testified she had plans to move out of Don's house after an alleged sexual assault on Oct 8th, but a DOVE worker testified that Connie had refused an offer to help move her out. Also contradicting her alleged plan to move out at the first opportunity are the facts that Don usually worked seven days a week and at least 12-hours a day, and that her family visited Don's house nearly everyday while he was at work, which family drove vans and trucks. Connie could have moved out anytime she wanted to, but she did not.

26. Connie also admitted at trial that, during this same period she had plans to move out, she had instead ordered and installed (at her expense) a new satellite dish along with a year's worth of programming; ordered and installed her own telephone line and telephone (at her expense); and planned and hosted a housewarming party. None of this is consistent with someone 'planning to move out at the very first chance she has' after an alleged rape on Oct 8. These facts prove she had no plans to leave. She planned to *stay*.

27. Also inconsistent with her claim of a rape on Oct. 8th is her admission that, just days after this alleged rape, she asked Don to baby-sit her son and several of her friends' children all alone on an overnight sleepover birthday party for her son, during which time she worked a double shift up until 11:30 P.M. This proves she completely trusted Don.
28. Connie's claim in her police report that she had been assaulted with a gun/hammer for *2-hours* was incredible and no jury would believe that, so she changed her story at trial, now testifying that a gun/hammer assault had lasted for (a more credible) *2-minutes*.
29. At the prelim hearing she testified that a gun/hammer was used *before* her sister had arrived at the house, but then at trial testified that a gun/hammer event occurred *after* her sister had already left the house.
30. After police failed to locate any 'red-laser sighted pistol' she claimed was pointed at her on multiple occasions, Connie simply changed her story again and testified at trial that she was "*not so sure about that part*" of her story, though a 'red laser sighted pistol' was the claim that had caused Don's arrest in the first place.
31. At trial, Connie denied one of her criminal convictions that resulted from her having been caught lying to Michigan police, then continued to deny that conviction even after she was shown a copy of the judgment of conviction.
32. Connie testified she was being sexually assaulted when her sister arrived, felt she was being saved by her arrival, but that Don had held her down and sent her sister away, then continued assaulting her. This sister, Michelle Vargovich, did arrive but was not sent away. Don had invited her in and Michelle gathered items she left there the night before and is an eyewitness to the fact that no assault was in progress as Connie falsely claimed.
33. When her sister arrived and came up the driveway, Connie claimed in her police reports that she "*tried to get up*"; then at the prelim testified she was "*pushed down*" onto a bed; then at trial testified "*We looked out the window and saw that it was [her] sister*".
34. Connie claimed in her revised written police report that her sister had arrived *after* an alleged assault; but at trial claimed her sister had come over *during* an alleged assault.
35. Connie's revised police report and preliminary hearing testimony both claim that she had been 'thrown down onto her knees' on Oct. 19th, but then at trial testified that her knees were hurting because she had been thrown down on Oct. 8th instead.
36. For the sole purpose of obtaining evidence for a sexual assault prosecution, Connie was sent to the Grandview Hospital and examined by Dr. Robins. He examined Connie then testified that it was medically certain she was "*sexually assaulted*", then told the jury that he "*believes her story*". Dr. Robins said Connie had told him that she was assaulted "*from shortly after midnight until 4 A.M.*", but certified telephone records, along with Connie's own admissions at trial, prove there was no assault, that she was not even with Don, but that she was in town calling Don from a payphone at 3:49 A.M.

37. On the domestic violence worksheet Connie claimed repeated punching, head slams into a truck, hair pulled out, choking, strangling, running barefoot down a long gravel driveway to escape, and rape. But Dr. Robins who examined her admitted he had found *no* injury to her face consistent with punching; *no* injury to her head consistent with hair ripping or head slams; *no* injury to her neck consistent with choking or strangling; *no* injury to either foot consistent with running barefoot over gravel; and found *no* evidence of sexual contact – summing up the results of his sexual exam as "*normal*." The doctor's own findings had disproved the *specific details* of Connie's story.

38. Don testified that Connie was extremely intoxicated when he brought her home from town and Connie herself admitted she had stumbled and fell while going into the house. Don testified she had vomited on herself in the yard when going into the house, and that he helped her into the shower, which event Connie claimed was an 'assault'. At trial she claimed she was sprayed with a shower head while "*still wearing*" her clothes, but later testified her clothes were torn off and "*then*" she was sprayed. At the prelim hearing she testified Don left the bathroom "*then*" she "*grabbed a towel*"; but at trial she testified "*Don threw a towel*" at her and then he left the bathroom.

39. At the preliminary hearing Connie testified: "*I snuck through the living room*"; then at trial she again changed her story by testifying: "*I ran for the living room door*."

40. Connie's initial police report claims she tried to use the telephone *after* she left the shower, but Don ripped it out of the wall. Her story changed at trial and she now testified she tried to use the telephone *before* she took a shower, but Don ripped it out then. There was no evidence of any telephone or wiring having been ripped out of anything.

41. Connie's revised police report said Don held a gun to her "*knees*", but testified at the prelim that a gun was held to one "*kneecap*" (both knees vs. one knee). When asked which hand Don held the gun in, she answered: "*Probably right, he's right-handed*." This was not an answer relying on memory of any event—it was an answer relying upon *logic*.

• AFTER TRIAL

42. Mathematical analysis of Connie's trial testimony indicates defense counsel had asked her 154-material questions regarding her story, but that she had failed to answer 92 of those questions. She failed to answer 67% (7 out of 10) of the material questions asked by trial counsel, and of the 33% she did answer, most answers conflicted with her prior statements and/or testimonies. Of the total number of questions that she was asked by defense counsel, Connie had responded to 73-questions with: "*I don't know*" (15-times); "*I don't remember*" (21-times), and "*I'm not sure*" (37-times).

43. After Don was sent to prison Connie and her sister Heather approached Mr. Alan Prezkop who was bartending at Mel's Bar near the Vargovichs' residence. Prezkop has sworn out an affidavit stating Connie approached him and confessed Don's complete innocence and that her sister yanked Connie away, warning she was "hanging herself."

44. Connie's friend, Michele Aspinwall, indicates Connie had often threatened to get revenge against prior boyfriends who break up with her and revealed that Connie was socially and sexually involved with the trial judge in this case for years—which the judge failed to disclose. A bartender at a local establishment frequented by Connie and the judge also made statements concerning her personal observation that Connie and Judge Madden were party buddies prior to Don's trial, and that she also has seen them together.

45. Court records were examined and reveal that Connie had pleaded guilty to drunk-driving charges in the Iron County Circuit Court, that Judge Madden accepted her guilty plea, but then allowed her to walk out without any fine, jail time, or probation. All other similarly situated persons (including a police officer) were assessed fines and/or jail time.

46. Don testified that he had directed Connie to move out of his home because she was cheating on him with a prior boyfriend, Kim Aijala, and was falsely accusing him as revenge. Don also told the jury Connie promised that she would make him "pay" for this. We received a note from Mr. Aijala telling us that Connie frequently threatened to make him "pay" and then his problems would start, which problems included false accusations by Connie. Aijala also tells us that Connie had told him Don "kicked her out", which supports Don's story and contradicts her testimony that she was held against her will.

47. Don testified Connie had told him her bruising was caused by Aijala when she visited his home, and she went there despite a protection order she had on Aijala which claims he beat and bruised her "many times." In his note, Mr. Aijala admits Connie would come around his home, but he didn't want her there, and told us it had taken him and two friends to remove her from his home. That it took three grown men to physically remove Connie supports Don's testimony that she would come home with bruising after visiting Aijala's residence. Connie even admitted at trial that she had been inside Aijala's home.

48. Shortly after a website began publishing evidence that Connie has falsely accused Don, the district attorney called the prison where Don is held and accused Don of calling Connie on the telephone to threaten and harass her. Prison officials investigated all the telephone records and discovered Don had made no such calls at any time. Then the district attorney himself admitted to news reporter Margaret Levra that "*Connie lied*".

49. Don's defense at trial was that Connie was falsely accusing him as revenge for his having directed her to move out of his home, and that proven to be false accusation about Don telephoning her from prison to threaten and harass her is consistent with Don's defense. Because Connie was not happy with a website exposing her as a liar and false accuser, she simply decided to answer the published evidence of her false accusations in the only way she knows how: By making even more false accusations against Don.

- **INCONSISTENT STATEMENTS BY DON MILLER**

1. Not one inconsistency was found.