

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

JAMES D. GARDETTO
D.O.B.: 5/30/1965

Case No. 2012-CF- 1213

Current Address:
Waukesha County Jail
515 W. Moreland Blvd.
Waukesha, WI 53188,

Last Known Address:
269 N. Chicago Ave.,
South Milwaukee, WI 53172,

Defendant.

CLERK OF CIRCUIT COURT
CRIMINAL/TRAFFIC DIV.
2012 SEP 28 PM 3:55

SUMMONS

THE STATE OF WISCONSIN TO SAID DEFENDANT:

The Complaint, a copy of which is attached, having been made before me accuses the defendant of the following crime:

FALSE SWEARING

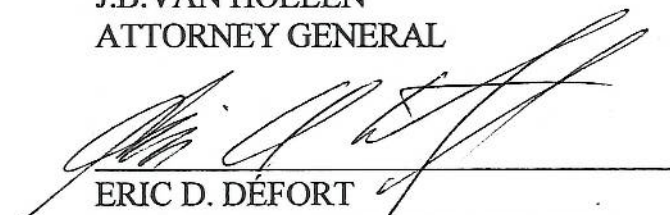
On June 11, 2010, in the County of Waukesha, Wisconsin, the above named defendant did make a false statement which he did not believe was true, under an oath which was authorized or required by law, contrary to Wis. Stat. § 946.32(1)(a).

You, JAMES D. GARDETTO, are, therefore, summoned to appear in the Circuit Court for the County of Waukesha at the courthouse in the City of Waukesha located at 515 W. Moreland Blvd., Waukesha, WI 53188, before Court Commissioner Laura A
LAn, to answer said Complaint, on Wednesday, the 17th day of October, 2012,
at 1:15 ~~AM~~ P.M.

In case you fail to appear, a warrant for your arrest may be issued.

Dated this 2nd day of SEPTEMBER, 2011.

J.B.VAN HOLLEN
ATTORNEY GENERAL



ERIC D. DEFORT
ASSISTANT ATTORNEY GENERAL
WISCONSIN DEPARTMENT OF JUSTICE
Special Prosecutor for the County of Waukesha
State Bar No.: 1041760

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857

ADMISSION OF SERVICE

I certify and admit that I have received this summons.

Signed: Refused to sign Date: 9-28-12 9:56 AM
JAMES D. GARDETTO

Served By: Justin Withers Date: 9-28-12 9:56 AM

THE STATE OF WISCONSIN,

Plaintiff,

v.

JAMES D. GARDETTO
D.O.B.: 5/30/1965Case No. 12-CF- 1213Current Address:
Waukesha County Jail
515 W. Moreland Blvd.
Waukesha, WI 53188,Last Known Address:
269 N. Chicago Ave.,
South Milwaukee, WI 53172,Defendant.

CRIMINAL COMPLAINT

FALSE SWEARING

On June 11, 2010, in the County of Waukesha, Wisconsin, the above-named defendant did make a false statement which he did not believe was true, under an oath which was authorized or required by law, to wit: falsely stating in a small claims court trial that as of July 3, 2009, he did not know where the television that he took from the Polentini family was located, contrary to Wis. Stat. § 946.32(1)(a).

Upon conviction for this offense, a Class H Felony, the maximum penalty is a fine not to exceed \$10,000, imprisonment not to exceed 6 years, or both.

FACTUAL BASIS

- 1.) The complainant is a Wisconsin Department of Justice Consumer Protection Investigator and bases this complaint upon information and belief, her review of Waukesha county circuit court records, her own personal observations, and the statements of adult citizen witnesses.
- 2.) The complainant spoke with Mark and Susie Polentini, adult citizen witnesses. Mark Polentini said that he called Elmbrook Electronics in June of 2009 and asked that they come out to give him an estimate on a television repair so that he could submit the estimate to his insurance company because his television was damaged during a lightning storm. Mr. Polentini said that he did not intend on getting the television repaired the day of the estimate. Mark Polentini said that he understood that the cost of doing the estimate would be \$79.00.
- 3.) Susie Polentini states that on July 1, 2009, that Mr. James Gardetto came to her home, located in the City of Hartland, County of Waukesha, for the purpose of giving an estimate on the repair of her family's television. Mr. Gardetto told her that the television was worth \$4000.00 to \$5000.00 and that it would cost \$825.00 to repair it. Mr. Gardetto asked her for a deposit of \$475.00, which she paid by check, provided her with a contract, and then took possession of the television. On the morning of July 2, 2009, Mark Polentini called Elmbrook Electronics and spoke with someone who identified himself as Steve Schmidt. Mr. Polentini requested that Elmbrook Electronics return the television and offered to pay for the trip charges. The individual on the phone refused to return the television. Mr. Polentini then looked up the corporate address of Elmbrook Electronics on file with the Department of Financial Institutions. The address was listed as 14410 W. Bluemound Road, Brookfield, Wisconsin. Mr. Polentini then drove to the area where the address should be located and realized that the address does not exist. Mr. Polentini then went home and cancelled the check that Susie Polentini wrote the day before.

4.) Susie Polentini stated that on July 3, 2009, she contacted Mr. Gardetto by phone and requested the return of the television in exchange for the trip charges. Mr. Gardetto refused. During the conversation, Gardetto told Mrs. Polentini that, according to the contract, he was going to keep the television until he was done fixing it. He also told Mrs. Polentini that it did not matter whether or not he had performed any work on the television.

5.) Susie Polentini also sent an email to Elmbrook Electronics requesting the return of the television in exchange for any trip charges or fees.

6.) The complainant has reviewed a letter sent to Mark Polentini from Elmbrook Electronics dated September 22, 2009. The letter reflects that Elmbrook Electronics was still in possession of the TV on September 22, 2009, and that Elmbrook Electronics wanted storage fees for the TV "at a rate of 3.50 per day." Susie Polentini states that in the small claims court case, Mr. Gardetto did not deny that he, in fact, wrote this letter.

7.) In September of 2009, the Polentini family obtained legal counsel and later sued Elmbrook Electronics and Gardetto.

8.) According to Susie Polentini, on June 11, 2010, Gardetto appeared in court in response to the lawsuit for a hearing. Susie Polentini stated that Mr. Gardetto testified under oath that he was the one that spoke with Susie Polentini on July 3, 2009. Susie Polentini stated that Gardetto testified that when he took possession of the Polentinis' television, he took it to an undisclosed location and gave it to an individual in a van. Additionally, Polentini stated that Gardetto testified that he did not know the name of the individual but claimed that he had seen him many times in the past. The trial court rendered a judgment against Gardetto for double damages, court fees, and legal fees. Gardetto never returned the television to the Polentinis.

9.) The complainant has reviewed the statement of Brian M. Brejcha. Mr. Brejcha states that he recalls the testimony given by James Gardetto at a hearing/court trial on June 11, 2010, before

the Honorable Thomas J. Pieper, Court Commissioner in Case No. 2009-SC-005804. Brejcha states that Gardetto testified that he took the Polentini family television on July 3, 2009, and drove it to an undisclosed location where he transferred the TV to an individual. Gardetto testified that he does not know the name of the individual to whom he gave the TV. Brejcha stated that Gardetto testified that he did not know where the TV was taken after he gave it to the unknown individual on July 3, 2009. Gardetto also testified that on June 11, 2010, he still did not know where the TV was located.

10.) The complainant has reviewed the statement of Brenda Hine, Deputy Clerk of Circuit Court, Waukesha County Circuit Court, State of Wisconsin. Hine states that on June 11, 2010, in performing her duties as Deputy Clerk of Circuit Court, she was clerking a court hearing for Commissioner Thomas J. Pieper in case number 09SC5804. Hine states that "pursuant to Wisconsin Stats. Sec. 906.03," she "provided an Oath to a witness, Mr. James Gardetto, before he testified at said hearing." Hine reports that the oath that she administered to Gardetto was as follows: "Do you swear that the testimony you are about to give in this matter before the court, shall be the truth, the whole truth and nothing but the truth, so help you God?" Hine reports that Mr. Gardetto affirmed by answering "I do."

11.) The complainant is aware that the Waukesha County Circuit Court was located in the County of Waukesha on June 11, 2010.

12.) The complainant has reviewed the contract for services given to Mrs. Polentini by Mr. Gardetto. The contract describes the Polentini family's television and remote control as follows: PANASONIC, PLASMA TV, MODEL# TH-50PX75U, SERIAL# MA72610450, REMOTE# N2QAYB000103.

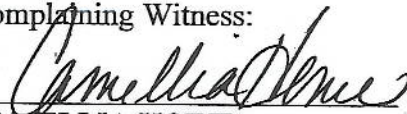
13.) On or about April 24, 2012, a search warrant was performed on a storage locker belonging to Mr. James D. Gardetto, located at 5000 S. Nicholson, Avenue, Cudahy, Wisconsin

53110. At the scene of the search warrant the complainant observed and identified the Polentini family's television and remote control.

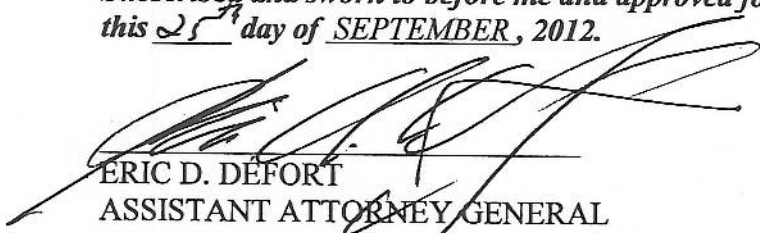
**** END OF COMPLAINT ****

Dated this 25 day of SEPTEMBER, 2012.

Complaining Witness:


CAMELLIA HOWE
Consumer Protection Investigator
Wisconsin Department of Justice

*Subscribed and sworn to before me and approved for filing
this 25th day of SEPTEMBER, 2012.*


ERIC D. DEFORT
ASSISTANT ATTORNEY GENERAL
WISCONSIN DEPARTMENT OF JUSTICE
Special Prosecutor for the County of Waukesha
17 W. Main Street, Madison, Wisconsin 53707
State Bar No. 1041760