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STATE OF WISCONSIN
COURT OF APPEALS

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OF WISCONSIN**

DISTRICT I

Case No(s). 2015AP000451, 452 - CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

vs.

Milwaukee Co. Case
No(s). 2012CM005674
and 2012CM006309

RANDALL MADISON,
Defendant-Appellant.

APPEAL FROM THE JUDGMENT OF CONVICTION
AND SENTENCE ORDERED AND ENTERED IN THE
CIRCUIT COURT FOR MILWAUKEE COUNTY, THE
HONORABLE LINDSEY GRADY, PRESIDING
AND THE ORDER DENYING THE MOTION FOR
DISMISSAL OR A NEW TRIAL

BRIEF AND APPENDIX OF THE DEFENDANT-
APPELLANT, RANDALL MADISON

SUBMITTED BY:

Chris Bailey
State Bar Number 1025546
Attorney for Defendant-
Appellant

P.O. Address:
4810 S. 76th Street, Suite 202
Greenfield, WI 53220
Tel: (414)604-8220

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STATEMENT OF THE ISSUES

- I. SHOULD THE MOTION TO DISMISS OR A NEW TRIAL BEEN GRANTED?

THE TRIAL COURT ANSWERED: THE MOTION FOR A DISMISSAL OR A NEW TRIAL WAS DENIED.

STATEMENT ON ORAL ARGUMENT AND
PUBLICATION

The Defendant-Appellant does not request oral argument or publication in this case because he believes that the issues can be fully described in the parties' briefs and that the case presents issues of well established rules of law.

STATEMENT OF THE CASE

On October 25th, 2012, a criminal complaint, case number 2012CM5674 was filed against Randall Madison (hereinafter “Madison”) which alleged that Madison had committed the offense of Violating a Domestic Abuse Injunction and Resisting/Obstructing Officer contrary to Wis. Stat. 961.41(3g)(am) and 939.50(3)(i). (R1.2)¹. On December 19th, 2012, another criminal complaint was filed alleging that he had committed the offense of bail jumping. Wis. Stat. 946.49(1)(a). (R2. 2). This complaint was on Milwaukee County case number 2012CM006309. An additional three count complaint was filed on May 10th, 2013, but it is not part of this appeal. On November 12th and 13th, 2013, all cases went to trial. He was convicted of the charges in both of the cases subject to this appeal.

Madison was then sentenced to 24 months probation with 6 months jail imposed and stayed for the conviction of resisting/obstructing an officer and violating a domestic

¹ Appeal case numbers 2015AP000451 - CR (Milwaukee county circuit court number 2012CM5674) will be R1 and 2015AP000452 - CR (Milwaukee county circuit court case number 2012CM6309) will be R2.

abuse injunction. (R1.23). On the bail jumping conviction, he received the same sentence concurrently. (R2.13).

This case is before this Court pursuant to Madison's notice of appeal filed on March 4th, 2015. (R1.30, R2.22). The cases were consolidated for appeal.

STATEMENT OF THE FACTS

On October 25th, 2012, a criminal complaint, case number 2012CM5674 was filed against Madison which alleged that Madison had committed the offense of Violating a Domestic Abuse Injunction and Resisting/Obstructing Officer. (R1.2).

This complaint detailed that on October 23rd, 2012, Police were dispatched to the home of Felicia Madison based upon her report that Mr. Madison had come to the home. (R1. 2). He was legally barred from being at that location because there was an active injunction forbidding him from going to her home.

When police arrived, they confirmed that Madison was in the home. He refused to come out, and the police needed to force a steel security door open in order to take him into custody.

On December 19th, 2012, a subsequent criminal complaint was filed alleging that he had committed the offense of bail jumping. (R2. 2). This complaint was on Milwaukee County case number 2012CM006309.

The complaint detailed how Madison had committed bail jumping. He did so by being present at his wife's home of 2415 N. 40th Street, Milwaukee, Wisconsin on November 12th, 2012 in violation of a bail condition not to go there ordered by the court on November 6th, 2012.

The cases went to jury trial, and he was convicted on the cases currently before the court. A post-conviction motion was filed moving for dismissal or a new trial based upon admission of misleading evidence to the jury and the court denying the admission of evidence. (R1.20). (App. 108). The motion was denied. (R1.21 and App. 112).

For the sake of narrowing the issues on this appeal, this brief will focus on the court's decision to deny the post-conviction motion filed by the defense on both cases.

This case is before this Court pursuant to Madison's notice of appeal filed on March 4th, 2015. (R1.22, R1.30). The cases were consolidated for appeal on March 11th, 2015.

ARGUMENT

I. THE DENIAL OF THE MOTION TO DISMISS OR FOR A NEW TRIAL WAS IMPROPER

In this appeal, Madison challenges the denial of his post-conviction motion for a new trial or a dismissal.

A. Standard of Review.

When reviewing a post-conviction motion of this type, this court will uphold the circuit court's factual findings unless those findings are clearly erroneous. *State v. Patton*, 2006 WI App 235, ¶7, 297 Wis. 2d 415, 724 N.W.2d 347. On appeal, the court reviews *de novo* whether the denial was a violation of his due process rights. *State v. Young*, 2006 WI 98, ¶17, 294 Wis. 2d 1, 717 N.W.2d 729.

B. Madison's motion for a dismissal or new trial should have been granted.

In order for evidence to be excluded, the relevant evidence must not be simply prejudicial. Nearly all of the State's evidence is prejudicial to the defendant in some way. *See State v. Murphy*, 188 Wis.2d 508, 521, 524 N.W.2d 924 (Ct.App.1994). To be excluded, the evidence must be unfairly prejudicial. A portion of the evidence admitted in this case was actually not true.

The term “unfair prejudice,” as to a criminal defendant, speaks to the capacity of some conceitedly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged. *State v. Alexander*, 214 Wis.2d 628, 642, 571 N.W.2d 662 (1997). Unfair prejudice means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one. *Id.*

A trial court's decision to admit evidence is a discretionary one, and will be affirmed if the trial court reviewed the relevant facts, applied a proper standard of law, and using a rational process, reached a reasonable conclusion. *State v. Davidson*, 2000 WI 91, ¶ 53, 236 Wis.2d 537, 613 N.W.2d 606. In deciding whether to admit the evidence, the court is to engage in a three-step inquiry: (1) is the other acts evidence offered for an acceptable purpose under Wis. Stat. § 904.04(2); (2) is the other acts evidence relevant under Wis. Stat. § 904.01; and (3) is the probative value of the other acts evidence substantially outweighed by the danger of unfair prejudice, confusion, or delay under Wis. Stat. § 904.03, *State v. Sullivan*, 216 Wis.2d 768, 772-73, 576 N.W.2d 30 (1998).

In the case at hand, it appears that the evidence that was admitted was actually not true. In the court of the afternoon session of the November 13th, 2013 jury trial, all parties reviewed the closing argument of the State. (R1.34:67, R2.44:67). It showed that the court allowed the State to say that the defendant was taken into custody on every single incident that had occurred over the defense's objection. However, he had not been taken into custody on the third set of charges. The State had made an argument to the jury that was not supported by the facts that were presented into evidence.

The Section 906.09 reflects the longstanding view in Wisconsin that one who has been convicted of a crime is less likely to be a truthful witness than one who has not been convicted. *State v. Kuntz*, 160 Wis.2d 722, 752, 467 N.W.2d 531 (1991). Because the defendant was facing the scrutiny of a jury, any negative information about the defendant that would lead the jury to think that he has a propensity to commit crimes or has been taken into custody more than he actually has as presented by the State, it is clearly prejudicial to the defendant.

Error in admitting evidence is subject to harmless error analysis. *State v. Thoms*, 228 Wis.2d 868, 873, 599 N.W.2d 84 (Ct.App.1999). The test for harmless error is whether there is a reasonable possibility that the error contributed to the conviction. *Id.* The beneficiary of the error, here the State, has the burden to establish that the admission of this evidence was not prejudicial. *Id.* The conviction must be reversed unless the court is certain that the error did not influence the jury “or had such slight effect as to be de minimus.” *Id.* In determining if harmless error exists, the court must focus on whether the error undermines confidence in the case's outcome. *Id.*

The court should consider the error in the context of the entire trial and consider the strength of untainted evidence. The admission over the objection of the defendant of an accusation made by the State that is untrue is clearly prejudicial and should culminate in the dismissal of the case. There were additional issues that bolster the argument that the case should be dismissed or a new trial should be granted.

During the morning session of November 13th, 2013 jury trial, the following questions and answers occurred during the direct examination of the defendant:

Q. (by Mr. Hailstock) The injunction, it basically said you have to stay away from her, correct?

A. Yes.

Q. What's the problem with that?

A. The problem with that is that she stalks me.

MS. GRAYSON: Objection.

THE COURT: We will have a side bar.
(R1.33:70. R2.43:70).

The court ruled that the question and answer were to be struck. At the conclusion of testimony for that session, the court placed almost all the side bars on the record.

However, there was a failure to put on the record the contents of the side bar concerning the stalking that may have been perpetrated by the victim on the case.

If the defendant testified that the victim was actively stalking the defendant, that obviously impacts not only the jurors' perception of a key witness but also the trial strategy

of the defendant. He very well may have prepared a section of his defense to use that piece of evidence, but he was never allowed to present it.

The exclusion of evidence from the record which could clearly be helpful to the defendant is arguable grounds for a new trial. Madison should be allowed to present the argument as part of his defense.

CONCLUSION

For all the reasons stated above, the defendant, Randall Madison, respectfully requests that this Court reverse the ruling of the circuit court and grant either a dismissal of all convictions or a remand for a new trial.

Signed at Greenfield, Wisconsin, this 23rd day of May, 2015.

Chris Bailey
SBN 1025546
Attorney for the Defendant

P.O. Address:
4810 S. 76th Street, Suite 202
Greenfield, WI 53220
Tel: (414)604-8220
Fax: (414)604-8221

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief and appendix conforms to the rules contained in s. 809.19 (8) (b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 1,593 words.

Dated this 23rd day of May, 2015.

Chris Bailey
State Bar No. 1025546

P.O. Address:
4810 S. 76th Street, Suite 202
Greenfield, WI 53220
Tel: (414)604-8220

CERTIFICATION OF COMPLIANCE WITH RULE
809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief
complies with the requirements of s. 809.19(12).

I further certify that:

This electronic brief is identical in content and
format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the
paper copies of this brief filed with the Court and served on
all opposing parties.

Dated this 23rd day of May, 2015.

Chris Bailey
State Bar No. 1025546

P.O. Address:
4810 S. 76th Street, Suite 202
Greenfield, WI 53220
Tel: (414)604-8220

CERTIFICATION OF COMPLIANCE WITH RULE
809.19(13)

I hereby certify that:

I have submitted an electronic copy of this appendix,
which complies with the requirements of s. 809.19(13).

I further certify that:

This electronic appendix is identical in content and
format to the printed form of the appendix filed as of this
date.

A copy of this certificate has been served with the
paper copies of this brief filed with the Court and served on
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Dated this 23rd day of May, 2015.

Chris Bailey
State Bar No. 1025546

P.O. Address:
4810 S. 76th Street, Suite 202
Greenfield, WI 53220
Tel: (414)604-8220

CERTIFICATION OF APPENDIX

I hereby certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Signed: _____
Chris Bailey
State Bar No. 1025546

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