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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2024AP115-CR

STATE OF WISCONSIN

Plaintiff-Respondent

v.

Case No: 24AP115-CR

Circuit Court Case No. 21CF3408

LYNETTA LAKE

Defendant-Appellant

Appeal from the Milwaukee County Circuit Court

Case No. 21CF1308

The Honorable Kori Ashley Presiding

REPLY BRIEF OF DEFENDANT APPELLANT,
LYNETTA LAKE

**I. Defense's Postconviction Motion Alleged
Sufficient Facts to Entitle Defense to a Hearing.**

This Court should reverse the decision of the circuit court and remand this matter back to the circuit court for a *Machner* hearing because Defense's motion, raising ineffective assistance of counsel, alleged sufficient facts that, if true, warranted relief. Whether a "[postconviction] motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief" or "the record conclusively demonstrates that the defendant is entitled to no relief" are questions of law reviewed de novo. *State v. Ruffin*, 2022 WI 34, ¶ 27, 401 Wis. 2d 619, 974 N.W.2d 432. Where a defendant's postconviction motion, raising an ineffective representation claim alleges "sufficient material facts that, if true, would entitle the defendant to relief requested, the Court

“must hold an evidentiary hearing.” *State v. Allen*, 2004 WI 106 ¶9, 274 Wis.2d 568, 682 N.W.2d 433. A hearing, and an opportunity for trial counsel to testify is “a prerequisite to a claim of ineffective representation” and necessary to “determine whether trial counsel’s actions were the result of incompetence or deliberate trial strategies.” *State v. Machner*, 92 Wis.2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

As it was explained in Defense’s initial brief, the postconviction motion filed by Defense alleged that Ms. Lake’s trial attorney was aware of two potential witnesses of the incident and that Ms. Lake’s trial attorney did not call those witnesses to testify at the restitution hearing. The motion argued that the failure to call these witnesses was deficient performance because Ms. Lake alleged that she informed her attorney that these potential witnesses observed the incident. The motion further argued that Ms. Lake was prejudiced by the deficient performance of her attorney because the two additional witnesses would have tipped the scale of credibility in favor of Ms. Lake at the restitution hearing.

The state argues that neither of the potential witnesses claimed that they were personal witnesses of what happened. (State’s Br. 4). However, the state ignores the Griffin Lake Jr.’s statement where he writes, “My sister struck a white large size sedan.” This statement implies that Griffin Lake Jr. did observe the incident where his sister, Ms. Lake, struck a white large size sedan with her vehicle.

The state argues further, in its brief filed 133 days after the filing of Defense’s brief, that the timeliness of the written statements of the two potential witnesses negatively affect their credibility. (State’s Br. 4). However, had Ms. Lake’s trial attorney investigated the statements of these potential witnesses prior to the restitution hearing and had called these witnesses at the restitution hearing, the statements would have certainly been more timely. Therefore, Ms. Lake’s trial attorney’s failure to call these witnesses prejudiced Ms. Lake, under the state’s reasoning, in the ability to give a credible and timely statement.

CONCLUSION

For the aforementioned reasons this court should reverse the decision of the circuit court and remand this matter to the circuit court for further proceedings.

Dated at Milwaukee, Wisconsin this 13th day of August, 2024.

Respectfully submitted,

Electronically Signed by Kirk D. Henley

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I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief in that it is proportional serif font, minimum printing resolution of 300 dots per inch, 13-point body text. The text is 13-point type and the length of the brief is 501 words.

Dated: August 13, 2024

Respectfully submitted,

Electronically Signed by Kirk D. Henley

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