

STATE OF WISCONSIN
IN SUPREME COURT

APPEAL NO.2020AP1750-CR
(MILWAUKEE COUNTY CASE NO:13-CF-5083)

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CLERK OF SUPREME COURT
OF WISCONSIN

STATE OF WISCONSIN,
Plaintiff-Respondent

V.

RONALD H. GRIFFIN,
Defendant-Appellant-Petitioner

ON PETITION FOR REVIEW OF A DECISION OF THE COURT OF
APPEALS,DISTRICT 1, AFFIRMING THE FINAL ORDER ENTERED
IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE
STEPHANIE ROTHSTEIN PRESIDING

PETITION FOR REVIEW

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PETITION FOR REVIEW

Ronald Griffin respectfully petitions this Court pursuant to Wis.Stat. 808.10 and (Rule) 809.62, to review the decision of the Wisconsin Court of Appeals, district 1, dated February 22, 2022, affirming the judgment of conviction and the final order denying Griffin's post-conviction motion, entered in the Circuit Court for Milwaukee County, the Honorable Stephanie Rothstein, presiding.

ISSUES PRESENTED FOR REVIEW

1. Whether the majority's opinion in this case overstepped the bounds of the appropriate standard of review in State V. Pharr, 115 Wis.2d at 343.
2. Whether any error in admitting the letter evidence was harmless.

3. Whether the Circuit Court erred by concluding that Griffin failed to demonstrate sufficient material facts to be entitled to a Machner hearing.
4. The appellate Court considering Griffin's ineffective assistance of counsel claim through an analysis of prejudice was unreasonable

statement of criteria relied upon for review

This petition identifies and provides the Court an opportunity to resolve whether the Majority's opinion in this case has overstepped the bounds of the appropriate standard of review as is required by this Court's holding in State v. Pharr, 115 Wis.2d at 343. This petition also identifies and provides the Court an opportunity to resolve Griffin's other issues presented for review.

The law is clear that where the trial Court fails to set forth its reasoning in exercising its discretion to admit evidence, the appellate Court should independently review the record to determine whether it provides a basis for the trial Court's exercise of discretion. Pharr, 115 Wis.2d at 343.

It is worth noting that Judge Dugan in his concurring opinion in this case held that at the time the trial Court ruled that the letters were admissible, the trial Court failed to set forth its reasoning in exercising its discretion to admit the letters.

The majority's opinion in this case ignored its duty to conduct an independent review of the record which is required by this Court's decision in Pharr, supra. The Majority's opinion on this issue failed to even mention such a duty. Instead, the majority's opinion addressed the issue by assuming without

deciding that the letters were erroneously admitted and based their decision on their conclusion that any error was harmless.

Moreover, the majority's suggestion that the trial Court's ruling was harmless without first conducting an independent review of the record as is required by Pharr, supra is wholly unreasonable.

Review therefore is appropriate given the majority's opinion overstepped the bounds of the appropriate standard of review as is required by this Court's holding in Pharr, supra. Review is also appropriate given that the Court of appeals applied the harmless error rule to the trial Court's erroneous admission of the letter evidence. The harmless error rule presents a question of law that this Court reviews de novo. see, STATE V. HUNT, 360 Wis.2d 576 (quoting STATE V. JACKSON , 2014 WI 4, P.44, 352 Wis.2d 249, 841 N.W.2d 796).

Because this petition presents significant questions of law and because : (1) the appellate Court's majority opinion overstepped the bounds of the appropriate standard of review as is required by Pharr, supra and (2) because given the Court of appeals applying the harmless error rule to the erroneous admission of the letter evidence review is appropriate. See, Wis.Stat.(Rule) 809.62(1)(a), (c) and (d).

STATEMENT OF THE CASE

On November 7, 2013 the State filed a criminal complaint charging Ronald Griffin with one count of first-degree sexual assault, forcibly aiding and abetting his co-defendant Ricky Taylor; one count of second degree sexual assault; and one count of attempted second degree sexual assault.

T.F., the victim in this case testified at a jury trial in this matter that she met Taylor at a grocery store and had exchanged phone numbers. (R.132:172-73). Two months later, on October 30, 2013, Taylor asked T.F. to stop by his home. (R.132:171-72). T.F. agreed to come by for 20-30 minutes because she had somewhere else to be soon. (R.132:175). T.F. arrived and took her boots off at the door to avoid tracking in snow. (R.132:176).

Griffin, who T.F. did not know, was also at the apartment. (R.132:177). Taylor asked T.F. if she wanted to see a photo of his step child that he had in his bedroom, and T.F. agreed. (R.132:180).

She looked at the picture, and when she turned around Taylor had stripped down to his boxers. (R.132:181). T.F. said, "no that's not all happening tonight." (R.132:181). But Taylor closed the door turned out the light, forcibly grabbed T.F.'s head, and put his penis into her mouth. (R.132:182-84).

Griffin came into the room, and Taylor told T.F. that Griffin was going to have anal sex with her. (R.132:184-85). Griffin took off T.F.'s pants and underwear, and he inserted his penis into her anus (R.132:188). T.F. was able to move enough to knock Griffin over and kick Taylor off of the bed. (R.132:188-89). Taylor left the room. (R.132:189).

Griffin attempted to put his penis into T.F.'s vagina, but was not able to do so. (R.132:194). T.F. wrestled her hands free and began to punch Griffin in the head. (R.132:189-90). But Griffin put his penis into her anus so hard that T.F. lost her breath. (R.132:190).

T.F. grabbed her clothes and ran out of the home. (R.132:90). T.F. got into her car and drove to her cousin's house, but her cousin was not home. (R.133:16-17). Two days after the incident, T.F. had a meeting with Wagner (R.133:17-18). Wagner recommended T.F. report the assault to the police. (R.133:18). Two days after the meeting and four days after the assault, T.F. reported the assault to the police. (R.133:20-21). She waited to report it because she wanted her cousin to come along for support. (R.133:21).

Before T.F.'s cousin drove her to the police, Taylor called T.F. (R.133:21-22). Taylor asked T.F. to bring him to the grocery store. (R.133:22). T.F. said she was busy, but that she would get back to him. (R.133:22). At the police station, officer David Kozlowski arranged for T.F. to call Taylor and see whether he would confess to the sexual assault. (R.133:23).

Griffin and Taylor were taken into custody and charged with sexually assaulting T.F. on October 30, 2013.

In May 2014, Taylor entered a plea to resolve his charges. Taylor pled guilty to third-degree sexual assault (amended from the count of second-degree sexual assault), and his charge for first-degree sexual assault, forcibly aiding and abetting, was dismissed outright. In exchange, Taylor agreed to serve as a witness against Griffin.

The case against Griffin proceeded to trial in December 2014. Prior to the state calling Taylor as a witness, Griffin's trial attorney objected to the admission of the two letters purportedly from Griffin to Taylor. While the trial Court was addressing Griffin's

counsel's objection to the admissibility of the letters, Taylor's counsel clarified for the Court that the letters were passed between Griffin and Taylor while both were in jail and that how it was done would be explained in detail if it was allowed. The trial Court then stated, "so the Court's ruling is this. The questions may be asked of Mr. Taylor from whom did you get these notes." The Court then asked Taylor's trial counsel if he anticipated that Taylor was "passed these notes directly from Mr. Griffin?" Trial counsel responded that Taylor was on one side of the door between the jail pod and the gym and Griffin was on the other side and Griffin handed the note to a third inmate who slid it under the door to Taylor, all within Taylor's view. The trial Court then told the prosecutor that she had to craft a question for Taylor about how he received the letters that did not disclose to the jury either Griffin or Taylor were in custody.

The jury returned guilty verdicts on all three counts. In February 2015, the trial Court sentenced Griffin to a total term of 21 years initial confinement followed by 15 years of extended supervision.

Griffin filed a pro se motion for post-conviction relief pursuant to Wis.Stat.809.30, in April 2020. Griffin argued that the trial Court erred when it admitted the letters Taylor claimed he received from Griffin because there was insufficient evidence to authenticate that Griffin wrote them. After ordering briefing, the trial Court denied Griffin's motion in September 2020. Griffin moved for reconsideration, which the trial Court denied in a second order.

In its decision denying Griffins post-conviction motion the trial Court reiterated its statements that it made during the hearing on the objection to the admissibility of the letters as described above. It then stated that the Court stands by its admission of the letters, as well as its implicit ruling on the sufficient authentication of the letter.

The Court then went on to add more details explaining why it held that the letters were admissible by quoting the language in Wis.Stat.909.015(1),(4), for the proposition that authentication conforming with statutory requirements may be established by the testimony of a witness with knowledge that a matter is what it is claimed to be, as well as by 'contents, substance, or other distinctive characteristics, taken in conjunction with circumstances. The Court then stated that "Taylor's testimony, including his reading of portions of the contents of the letters discussing trial strategy, meets the statutory requirements for authentication. (App. 7).

The Court of appeals affirmed (App. 8). The majority did not address whether the letters were admissible. Rather, they addressed the issue by assuming without deciding that the letters were erroneously admitted and based their decision on their conclusion that any error was harmless. (App. 27).

Judge Dugan in his concurring opinion parted ways with the majority's opinion because they did not address whether the letters were admissible. Judge Dugan concluded that the letters were sufficiently authenticated and properly admitted into evidence. Dugan concluded that any challenge to the letters goes to the weight

of the evidence not its admissibility. Thus, judge Dugan would not address or join in the majority's harmless error analysis that the majority engaged in. (App. 27).

ARGUMENT

REVIEW IS APPROPRIATE TO DETERMINE WHETHER THE MAJORITY'S OPINION OVERSTEPPED THE BOUNDS OF THE APPROPRIATE STANDARD OF REVIEW IN STATE V. PHARR, 115 Wis.2d at 343.

The validity of the majority's opinion by suggesting that the trial Court's ruling in admitting the letter evidence without first conducting a independent review of the trial record as is required by this Court's holding in STATE V. PHARR, 115 Wis.2d at 343, presents a significant issue of law. The majority's opinion suggesting that the trial Court's ruling was harmless in admitting the letter evidence without first conducting an independent review of the record as is required by Pharr, supra, the majority of the appellate Court's opinion on this issue overstepped the bounds of the appropriate standard of review as is required by Pharr, supra.

Griffin seeks a new trial based on the trial Court erroneously exercising its discretion when it admitted the letter's Taylor claimed he received from Griffin because there was insufficient evidence to authenticate that Griffin wrote them.

There is no reasonable basis for the majority's opinion to suggest that the trial Court's ruling was harmless without first conducting a independent review of the record.

A. STANDARD OF REVIEW OF EVIDENTIARY DECISIONS

This Court reviews a circuit Court's decision to admit or

exclude evidence under an erroneous exercise of discretion standard
STATE V. PHARR, 115 Wis.2d 334, 342, 340 N.W.2d 498 (1983).

Upon review of evidentiary issues, the question on appeal is not whether this Court, ruling on the admissibility of the evidence would have permitted it to come in, but whether the trial Court exercised its discretion in accordance with accepted legal standards and in accordance with the facts of the record. PHARR, 115 Wis.2d at 342.

In analyzing this issue, the Court should keep in mind that at the time the trial Court ruled that the letters were admissible, the trial Court failed to set forth its reasoning in exercising its discretion to admit the letters. Specifically, the trial record does not show that the trial Court examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion at the time that it admitted the letters.

In such circumstances this Court determines whether the trial Court exercised its discretion in accordance with accepted legal standards. PHARR, 115 Wis.2d at 342. This Court therefore should grant review on this issue and set the matter for full briefing on the merits.

ARGUMENT

WHETHER ANY ERROR IN ADMITTING THE LETTER EVIDENCE WAS HARMLESS

A. HARMLESS ERROR ANALYSIS OF EVIDENTIARY DECISIONS

The United States Supreme Court set forth a test for harmless error in CHAPMAN V. UNITED STATES, 386 U.S. 18, 87 S.Ct. 824, 17

L.ED. 2d 705 (1967). Under Chapman, the error is harmless if the beneficiary of the error proves "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained."

Whether the error was harmless presents a question of law that this Court reviews de novo. STATE V. HUNT, 360 Wis.2d 570 (quoting STATE V. JACKSON, 2014 WI 4, P.44, 352 Wis.2d 249, 841 N.W. 2d 796.

A circuit Court's erroneous exercise of discretion in admitting evidence is subject to the harmless error rule. STATE V. RONELL HARRIS, 307 Wis.2d 555, P.113. For an error "to affect the substantial rights" of a party, there must be a reasonable possibility that the error contributed to the outcome of the action or proceeding at issue. STATE V. DYESS, 124 Wis.2d 525, 543, 547, 370 N.W.2d 222 (1985).

Griffin contends that the letter evidence that the trial Court erroneously admitted was not harmless and contributed to the verdict obtained. Griffin contends that this is based upon the following grounds:

- (1) The erroneous admission of the letter had a substantial and injurious effect in determining the jury's verdict.

Griffin submits that the trial Court's error in admitting the letter evidence had a substantial and injurious effect and influence in determining the jury's verdict. Specifically, the first letter from November contained harmful and insulting language that had substantial influence in determining the jury's verdict. The harmful and insulting language is contained in the first letter from November which stated in part: "What they trying to break us? Ha ha they cant break no real stand up nigga's, feel me? ...[S]o fuck the

judge, fuck the D.A., and fuck any nigga that wanna ride with'em."

Griffin contends that if the jury had any doubt as to his alleged involvement in the crimes charged, that the content of the harmful and insulting language described above would have given the jury a reason to believe that the language is consistent with Griffin's character as being undesirable. This in turn would have given the jury a reason to believe that Griffin had no remorse and had a complete disregard for the judicial process.

Without the letters being properly authenticated, and without the letters being proved to be authored by Griffin through expert handwriting analysis, the harmful and insulting language should not have been able to have been considered as consistent with Griffin's character.

The reading of the portion of the letter described above, had a substantial and injurious effect and influence in determining the jury's verdict. Therefore, this Court should find that the letter evidence was not harmless as there exists a reasonable possibility that the letter evidence contributed to the verdict obtained. This is an issue that is beyond any possibility of fairminded disagreement **RICHTER**, 562 U.S. at 103.

Moreover, the erroneous admission of the letter evidence was not harmless because of the following points :

- (1). The letters played a key role in the trial from the outset. The letters were also the last thing the State left in the jury's mind before they deliberated Griffin's fate, as the States end to its rebuttal closing focused on the letters.
- (2). The States choice to end its closing arguments with the

letters reflects it's importance to the prosecutor's case against Griffin.

- (3). The two letters were able to be used to bolster Taylor's credibility and that it is reasonable to conclude that if the jury had reason to doubt Taylor's version of events because of his plea deal to testify against Griffin then the introduction of the two letters as part of Taylors testimony could reasonably have given the jury a reason to beleive his testimony as being more reliable and truthful.

This Court therefore should grant review on this issue and set the matter for full briefing on the merits.

ARGUMENT

WHETHER THE CIRCUIT COURT ERRED BY CONCLUDING THAT GRIFFIN FAILED TO DEMONSTRATE SUFFICIENT MATERIAL FACTS TO BE ENTITLED TO A MACHNER HEARING.

1. STANDARD OF REVIEW :

This Court determines whether the post-conviction motion on its face alleges sufficient material facts that, if true, would entitle the defendant to releif. This is a question of law that this Court reviews de novo. *BENTLEY*, 201 Wis.2d at 309-10, 548 N.W.2d 50. See also *ALLEN*, 274 Wis.2d 568, P.9

2. INEFFECTIVE ASSISTANCE STANDARDS

Griffin's post-conviction motion is centered on his claim of ineffective assistance of counsel on one issue. This Court follows a two-part test for ineffective assistance of counsel claims. See, *STRICKLAND V. WASHINGTON*, 466 U.S. 668, 687, 104 S.CT. 2052, 80 L.ed. 2d 674 (1984) ; *STATE V. JOHNSON*, 153 Wis.2d 121, 127.

3. ALLEGATIONS IN GRIFFINS POST CONVICTION MOTION

Griffin's post-conviction motion claiming ineffective assistance of counsel alleges his trial counsel was ineffective for failing to

obtain weather data to impeach the credibility of T.F.. The weather data would also have further supported Griffin's theory of defense. See, (App.35), the weather data that is attached to Griffin's post-conviction motion. See also (App.36), Griffin's affidavit that is attached to his post-conviction motion.

Both the circuit Court and the appellate Court denied Griffin a Machner hearing to examine this claim. **STATE V. MACHNER, 92 Wis.2d 797, 804, 285 N.W.2d 905 (1979).**

Griffin submits that his post-conviction motion alleges, specific and substantial allegations that are sufficient to require a Machner hearing. Griffin alleges the following points within the four corners of his post-conviction motion :

- (1) Griffin asked trial counsel if he would pursue and obtain the weather data attached to his motion as exhibits K and L
- (2) Trial counsel informed Griffin that he would pursue and obtain the weather data because it would be used to undermine T.F.'s credibility and to further support counsel's theory of defense.
- (3) That Griffin would testify at a hearing about his conversations he had with his trial counsel on this issue.

Because the defense theory argued at trial was that T.F. was lying to get Griffin in trouble, trial counsel informed Griffin that the weather data would have been significant to further support the theory of defense and to undermine T.F.'s credibility.

Griffin alleged that the credibility of T.F. was essential to the case and that given the specific factual allegations in Griffin's post-conviction motion, the trial Court should have conducted a Machner hearing in order to assess whether trial counsel's conduct was deficient and if so, whether the deficient conduct was prejudicial Griffin suffered prejudice as the result of trial counsel's

failure to obtain and make use of the weather data. The weather data could have been used to undermine element three of count three of the prosecutions case. Had the jury heard the impeachment evidence in the form of the weather data, the jury could have concluded that T.F. never did take her boots off.

T.F.'s testimony that she removed her boots because she did not want to track snow through the house would have been undermined by the impeaching evidence in the form of the weather data. The weather data is material and relevant to the question of whether Griffin sexually assaulted T.F. and how the sexual assault allegedly happened. Why? because the weather data shows that there was no snow on the ground for T.F. to track through the house. T.F. testified that the snow is the reason why she removed her boots. However, if the jury beleived that T.F. never did take her boots off because of there being no snow on the ground, the jury could have concluded that Griffin never did by way of use of force, forcibly took T.F.'s pants off, to engage in any sexual acts towards T.F.

Therefore, the weather data being used to undermine T.F.'s testimony is material and relevant as to how the sexual assault allegedly happened and as to whether Griffin engaged in any sexual acts towards T.F. The jury should have been able to evaluate the impeaching evidence. Prejudice exists.

This Court should grant review on this issue and set the matter for full breifing on the merits.

ARGUMENT

**THE APPELLATE COURT CONSIDERING GRIFFIN'S INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM THROUGH AN ANAYLSIS OF
PREJUDICE WAS UNREASONABLE**

The Court of appeals concluded that T.F.'s testimony that she removed her boots is not material or relevant to the question of who sexually assaulted her or how the assault happened. (App.22).

The Court of appeals misrepresents Griffin's argument in this regard. Griffin argued that the weather data being used to impeach T.F.'s credibility would have given the jury a reason to conclude that T.F. never took her boots off. Not that T.F. removed her boots.

The weather data being used to impeach T.F.'s credibility is material and relevant to the question of who sexually assaulted T.F. and how that assault happened. The reason why the impeachment evidence in the form of the weather data is material and relevant is based on the argument that Griffin advanced in the argument section supra.

The Court of appeals erred by finding no prejudice. This Court should set this matter for full briefing on the merits.

CONCLUSION

For these reasons, Griffin asks that the Court grant review and set this matter for full briefing on the merits.

Dated this 11th day of March 2022

RESPECTFULLY SUBMITTED

Ronald Griffin

Ronald Griffin # 420720

N.L.C.I.

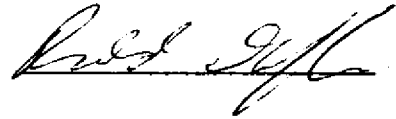
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RULE 809.19(8)(d) CERTIFICATION

I hereby certify that this petition conforms to the rules contained in Rules 809.19(8)(b) and 809.62(4) for a petition for review produced with a proportional serif font. The length of this petition is 3,355 words.

Respectfully submitted

A handwritten signature in cursive script, appearing to read "R. J. H.", written over a horizontal line.