COURT OF APPEALS
DECISION
DATED AND FILED

May 17, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal Nos. 2015AP657-CR
2015AP658-CR

Cir. Ct. Nos. 2012CM5295
2013CF1581

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARIO MARTINEZ REDMOND,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: REBECCA F. DALLET, Judge. *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 KESSLER, J. Mario Martinez Redmond appeals from a judgment of conviction, following a jury trial, of battery, disorderly conduct, and multiple

counts of witness intimidation. Redmond also appeals from the order denying his postconviction motion for relief. We affirm.

BACKGROUND

The Charges

¶2 On December 12, 2012, Redmond was charged with one count of endangering safety by use of a dangerous weapon, one count of misdemeanor battery, one count of criminal damage to property, and one count of disorderly conduct with the use of a dangerous weapon.[1] The State invoked the domestic abuse and repeater penalty enhancers on all of the charges. According to the complaint, the charges stemmed from an incident in which Redmond went to the apartment of his former girlfriend, T.P., forced his way inside, and proceeded to punch her. The complaint further states that Redmond left the apartment, but then came back with a semiautomatic weapon and screamed profanities at T.P. T.P. told police that Redmond, accompanied by an "unknown male," appeared intoxicated, broke her cell phone, and left her apartment with her apartment keys. At the time of Redmond's arrest, police seized two .40 caliber magazine clips, a digital scale, and a cell phone.

¶3 On May 6, 2013, Redmond was also charged with two counts of misdemeanor intimidation of a witness and one count of felony intimidation of a witness.[2] The charges stemmed from multiple phone calls made between December 12, 2012, and December 15, 2012, to T.P. and to an individual

[1] Redmond was charged in Milwaukee County Circuit Court Case No. 2012CM5295.

[2] The witness intimidation charges were brought in Milwaukee County Circuit Court Case No. 2013CF1581. The cases were consolidated for trial and are consolidated on appeal.

Redmond called "Pops." According to the complaint, Redmond "knowingly and maliciously attempt[ed] to dissuade [T.P.], a witness, from attending at a proceeding authorized by law." In the phone call to "Pops," Redmond asked "Pops" to call "shawty [P.]" and to tell her "not to come, or let her know what to do." The complaint states that "Pops" confirmed the first two numbers of "shawty [P.]'s" phone number, which matched the first two numbers of T.P.'s phone number.

¶4 On October 31, 2013, the State filed an amended Information, adding a fourth count of intimidation of a witness.[3] The additional charge stemmed from two phone calls made by Redmond shortly before trial was to commence. As relevant to this appeal, a phone call made on October 24, 2013, was to a female the State believed was T.P. In that conversation, a female told Redmond that "they" came to her home earlier and asked if she needed a ride to Redmond's trial. Redmond repeatedly told the female to avoid her apartment and to stay with her grandmother. The State believed the female voice was T.P. because on October 24, 2013, prior to the phone call, Milwaukee police went to T.P.'s home, served her with a subpoena to appear at Redmond's trial, and asked if she needed a ride to the trial.

Redmond's Motion to Suppress and the State's Motion to Amend the Information

¶5 The State sought to admit a series of four pages[4] of text messages from Redmond's phone, which Redmond sent out after the incident at T.P.'s

[3] The fourth witness intimidation charge was added to Milwaukee County Circuit Court Case No. 2013CF1581.

[4] Four pages of text messages refers to four "screen shots" of Redmond's phone. Each picture of the text messages on Redmond's phone constitutes one "page."

apartment. The messages state that Redmond planned to flee; that Redmond beat T.P.; and that Redmond knew police were aware of the altercation and would come looking for him. Redmond moved to suppress the messages, arguing that the messages were discovered as a result of an illegal search.

¶6 At the hearing on the motion, the State moved to amend the Information to add a fourth count of witness intimidation based on the phone call made from the House of Corrections on October 24, 2013. The State believed that Redmond and T.P. were the participants of the call. Redmond's counsel objected to the amended Information, arguing that the State did not adequately identify Redmond and T.P. as the participants in the phone call.

¶7 The trial court allowed the State to amend the Information, telling the parties that it listened to the recordings, read the transcript of the phone calls, reviewed the facts, and felt "based on the other calls … in terms of allowing the state to proceed, there is enough here to do that."

¶8 The trial court then addressed the suppression motion, hearing from multiple witnesses regarding the acquisition of Redmond's phone. Renee Rodgers Adams, Redmond's probation agent, testified that on December 11, 2012, she went to Redmond's home with two Milwaukee police officers after becoming aware of a warrant out for Redmond's arrest. Adams stated that when Redmond appeared, he was placed in handcuffs and proceeded to "walk outside" with the arresting officers. Adams said that once they were outside of Redmond's home, Redmond "began to jump and buck. And at that point he took off, he started to run. He dropped his cell phone and his shoes." Adams stated that the cell phone fell from Redmond's pocket and that as officers were running after Redmond, she stayed behind and picked up the cell phone. Adams stated that she looked at the

phone and "saw when [Redmond] was texting the victim and I seen her response" on the phone's screen. Adams stated that she did not manipulate the phone in any way, the four pages of messages simply were on the phone's screen.

¶9 Milwaukee Police Officer Scott Davis testified that he arrested Redmond on December 11, 2012. Davis stated that he handcuffed Redmond and conducted a search incident to the arrest, which included a pat-down. Davis stated that he felt an object in Redmond's pocket and retrieved a touch-screen cellular phone from one of Redmond's pockets. Davis "took a quick look" at the phone and saw a text message "stating something to the effect that he was gonna go on the run." Davis put the phone back in Redmond's pocket. At that point, Davis proceeded to lead Redmond to the squad car, but Redmond escaped Davis's grip and ran away. Officers apprehended Redmond approximately a block away, at which point Redmond's phone was no longer on him.

¶10 When presented with an exhibit of the four pages of text messages, Davis stated that he recalled the message on page one of the exhibit, which said "Im finna have to go on da run smh." Davis said that somebody would "[p]robably" have to scroll through the phone to see the rest of the text messages.

¶11 Sergeant Pamela Holmes testified that she arrived at the scene of the arrest after Redmond had been arrested. She stated that one of the arresting officers and Adams approached her squad car and told her that Redmond's phone contained text messages indicating that Redmond was "threatening his girlfriend" and they needed Holmes to take pictures of the messages. Holmes stated that when the phone was given to her, she saw Redmond's message admitting to beating T.P. and that the police knew about the incident. Holmes said when the phone was given to her, the message was apparent on the display screen—the

phone did not lock or "time out." Holmes stated that she scrolled to the beginning of Redmond's text conversation "so it can show that there was a dialog." Holmes said that the phone stayed lit the whole time she was scrolling, at no point did the phone lock.

¶12 The trial court granted Redmond's motion in part and denied it in part. Specifically, the court allowed page one of the four-page text series, in which Redmond wrote he was "finna have to go on da run smh," but excluded the remaining text messages, including the message in which Redmond admitted to beating T.P. The court stated:

> I just think that it's very hard to know exactly specifically where the phone was at all given points and what was on the phone at all given points.
>
> ….
>
> I think the sergeant's testimony is actually very helpful … because it does show also that these [text messages] all can't be on the screen at one time[.]...
>
> So that leaves me with what did people see….
>
> I think that the officer who did initially pick up the phone and was concerned with what he saw which was I'm [finna] to have to go on the run, we know at that point at which the time of arrest was based on his testimony that at that point the screen -- that was on the screen…. He testified he didn't move it. That's all he saw. I think that is not a search in any way….
>
> ….
>
> It's open and it's for him to see, so there's nothing about that that's a search.
>
> ….
>
> I don't think in [a] domestic violence context you expect to find things on a cell phone, so I don't think it's preserving of evidence or anything like that in terms of search incident to arrest; so I think it's totally

> distinguishable and it's not a search incident to arrest scrolling through someone's phone.
>
> Officers didn't get a warrant. That was their choice at that point. And based on that, I do think it was a search to go past this first screen, which I know in a snapshot in time at least Officer Davis saw that first screen at the first time he took that phone out of the defendant's pocket.
>
> So I'm gonna allow the first page of Exhibit 1 and that's it.

¶13 A jury ultimately convicted Redmond of one count of battery, one count of disorderly conduct, and all four counts of witness intimidation.

The Postconviction Motion

¶14 Redmond filed a postconviction motion arguing that he was entitled to a new trial because: (1) counsel was ineffective for failing to investigate three potential witnesses, among other things; (2) the trial court erroneously allowed Redmond's text message indicating he had to "run" into evidence; and (3) there was insufficient evidence to convict Redmond of three of the witness intimidation charges.

¶15 Redmond attached three statements to his motion—one from each of the people he claims could have been witnesses at his trial: (1) Steven Arnold; (2) Staci Randle; and (3) Mario Redmond, Sr. (Redmond's father). Arnold's statement indicates that he is related to T.P. by marriage and is a childhood friend of Redmond. The statement said that on the morning of December 10, 2012, Arnold, Randle, and Redmond were driving together in Randle's car. Arnold and Redmond dropped Randle off at work and then proceeded to T.P.'s apartment. T.P. appeared intoxicated and began yelling at Redmond about his relationships with other women. According to the statement, "[a]t no point during the verbal

altercation with [Redmond] and [T.P.], did [Redmond] cause bodily harm to [T.P.], nor did he or I, possess a firearm."

¶16 Randle's sworn affidavit also stated that Arnold and Redmond dropped her off at work on the morning of December 10, 2012. The affidavit states that Randle met with Redmond's counsel a few times and told counsel that Redmond texted her the morning he was arrested. The affidavit stated that counsel never "asked me about any knowledge I had of the events on December 10, 2012."

¶17 An affidavit from Redmond's father stated, as relevant, that he never called T.P. and never told T.P. not to come to court. Rather, Redmond's father claims that T.P. contacted him and that he told T.P. not to contact Redmond's parole agent.

¶18 The postconviction court denied the motion, finding that counsel was not ineffective for failing to investigate the witnesses, that the text message was appropriately admitted, and that sufficient evidence supported Redmond's conviction of three counts of witness intimidation. This appeal follows. Additional facts are included as necessary to the discussion.

DISCUSSION

I. Ineffective Assistance of Counsel

Standard of Review

¶19 The right to the effective assistance of counsel derives from the Sixth Amendment to the United States Constitution, made applicable here by the Fourteenth Amendment, and article 1, section 7 of the Wisconsin Constitution. *See* ***State v. Sanchez***, 201 Wis. 2d 219, 225-26, 548 N.W.2d 69 (1996). In order

to prevail on a claim of ineffective assistance of counsel, a defendant must show that his attorney's performance was deficient and that he was prejudiced as a result of his attorney's deficient conduct. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To prove deficient performance, the defendant must identify specific acts or omissions of his attorney that fall "outside the wide range of professionally competent assistance." ***Id.*** at 690. To show prejudice, the defendant must demonstrate that the result of the proceeding was unreliable. ***Id.*** at 687. If the defendant fails on either prong—deficient performance or prejudice—his ineffective assistance of counsel claim fails. ***Id.*** at 697. We strongly presume counsel has rendered adequate assistance. ***Id.*** at 690.

¶20 A postconviction hearing, or "***Machner*** hearing," is necessary to sustain a claim of ineffective assistance of counsel. *See* ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). A defendant's claim that counsel provided ineffective assistance does not, however, automatically trigger a right to a ***Machner*** hearing. *See* ***State v. Curtis***, 218 Wis. 2d 550, 555 n.3, 582 N.W.2d 409 (Ct. App. 1998). A trial court may deny a postconviction motion without a hearing "if the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief." ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. Whether a motion was sufficiently supported to warrant an evidentiary hearing is a legal issue that we review *de novo*. *See* ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996).

Failure to Investigate Witnesses

¶21 Redmond argues that his defense counsel was ineffective for failing to investigate Arnold, Randle, and his father because if they had testified,

Redmond contends, they would have "undermine[d] the complaining witness' credibility." We disagree.

¶22 As to Arnold, Redmond contends that counsel should have known to investigate Arnold because the police report states that Redmond was at T.P.'s apartment with another male. Redmond also states that his former counsel's notes reference a "Steven Miles" and defense counsel should have investigated this reference. "Steven Miles," Redmond contends, is Arnold.

¶23 The police report states that Redmond allowed "an unknown male into the residence." We agree with the postconviction court that nothing in the record proves that Arnold was actually the "unknown male." Like the postconviction court, we find it unlikely that T.P. would have described her relative (Arnold) as an "unknown male." Moreover, nothing in the record indicates that Redmond ever called his counsel's attention to Arnold or told counsel that Arnold was the "unknown male" in the police report. Counsel cannot be deemed ineffective for failing to investigate an unknown witness. *See* ***State v. Hubanks***, 173 Wis. 2d 1, 26-27, 496 N.W.2d 96 (Ct. App. 1992) (failure to investigate witnesses not ineffective where defendant has not revealed the existence of the witnesses).

¶24 Redmond also contends that defense counsel was ineffective because he did not investigate, and subsequently call, Randle as a witness. Randle's sworn statement states that she was with Redmond and Arnold on the morning of December 10, 2012, that the two dropped her off at work prior to going to T.P.'s apartment, and that Redmond texted her the morning of his arrest. Randle was not a witness to the altercation at T.P.'s apartment. Randle states that she and Redmond never even discussed the altercation. Redmond does not explain how

Randle's statements would have bolstered his defense. Randle's information is irrelevant. Redmond suffered no prejudice because Randle's testimony was not produced. Thus, counsel was not ineffective. *See* ***Strickland***, 466 U.S. at 697.

¶25 Redmond also contends that his defense counsel failed to investigate his father as a potential witness. Redmond argues that his father's testimony would have been relevant as to the witness intimidation charge that stemmed from Redmond's December 2012 phone conversation with "Pops." The conversation with "Pops" formed the basis for the second witness intimidation charge. The affidavit from Redmond's father does not confirm that he actually is "Pops." Rather, the affidavit vaguely states that Redmond's father spoke with Redmond while Redmond was in jail in December 2012, and that Redmond's father did not discourage T.P. from coming to court. The affidavit does not indicate that Redmond's father discussed any jail-house conversations with Redmond's defense counsel. The affidavit provides nothing that could have substantively bolstered Redmond's defense and affect the outcome of his trial. Thus, counsel was not ineffective for failing to investigate Redmond's father.

Failure to Adequately Object to the Amended Information

¶26 Redmond argues that his defense counsel failed to properly object to the amended Information, which added a fourth count of witness intimidation. Shortly before trial, the State sought to file an amended Information based on a phone call in October 2013, in which the State alleged that Redmond told T.P. to avoid her apartment and to stay with her grandmother. The call was made within hours of T.P. being subpoenaed to testify at Redmond's trial. Defense counsel objected, arguing that the State did not adequately show that Redmond placed the call or that T.P. was the recipient. The trial court allowed the amendment.

¶27 "[T]he State may add charges to an information as long as the additional counts are not wholly unrelated to the transactions or facts considered or testified to at the preliminary hearing." ***State v. Malcom***, 2001 WI App 291, ¶26, 249 Wis. 2d 403, 638 N.W.2d 918. "However, the charges must be related in terms of parties involved, witnesses involved, geographical proximity, time, physical evidence, motive and intent." ***Id.*** (quotation marks, citations, and brackets omitted). The decision of whether to allow an amendment is subject to the trial court's discretion. ***State v. Flakes***, 140 Wis. 2d 411, 416, 410 N.W.2d 614 (Ct. App. 1987). A court's decision to allow an amendment will not be reversed absent an erroneous exercise of discretion. ***Id.***

¶28 Redmond contends that the fourth charge was "wholly unrelated" to the rest of the charges against him. We note first that counsel did object, thus it is unclear what Redmond expected counsel to do differently. Nonetheless, no error was committed by adding the fourth charge; therefore, any further objection would have been meritless. At the time the State moved to amend the Information, Redmond had already been charged with three counts of intimidating T.P. based on attempts to convince her not to testify against him. The fourth charge stemmed from another such attempt. Although counsel did attempt to object based on the identity of the participants of the phone call, the trial court logically deduced that Redmond and T.P. were the likely participants. T.P. was subpoenaed earlier in the day and was offered a ride to the courthouse. A phone call from the House of Corrections was made two hours later, in which a female told the male caller that "they" had come to her house and asked if she needed a ride on the day of trial. The male asked if she was "ducking and driving" and told her multiple times to avoid her home and to stay with her grandmother. The phone number used to make the call belonged to an inmate in Redmond's dorm and had previously been

used to call Redmond's mother. Based on these facts, along with the trial court's recognition of Redmond's voice in the phone recording, the court found the phone call was "part and parcel of [Redmond's] continuing course of conduct." We agree. The fourth witness intimidation charge involved the same potential witness (T.P.), the same conduct (phone calls either to T.P. or about T.P.), the same motive (preventing T.P.'s testimony), and the same geographical proximity (calls were made from the House of Corrections). Based on these factors, the postconviction court noted that even if counsel had moved to dismiss the fourth charge, the trial court would have denied the motion.[5] Counsel cannot be deemed ineffective for failing to make a meritless argument. *See* ***State v. Toliver***, 187 Wis. 2d 346, 360, 523 N.W.2d 113 (Ct. App. 1994).

Failure to Dismiss the Witness Intimidation Charge Based on the Conversation with "Pops"

¶29 Redmond contends that counsel was ineffective for failing to move to dismiss the witness intimidation charge stemming from his December 2012 conversation with "Pops." Redmond argues that the State's Information left out key portions of the transcript of that phone call, which would have showed that Redmond and "Pops" were not discussing T.P. The postconviction court stated that any attempt to dismiss the charge would have been denied. The record does not contain a transcript of the December 2012 phone conversation with "Pops." We must assume that the missing portion of the record supports the postconviction court's decision, and we conclude that counsel cannot be deemed ineffective for failing to make a meritless argument. *See* ***State v. McAttee***, 2001 WI App 262, ¶5 n.1, 248 Wis. 2d 865, 637 N.W.2d 774 (appellant has the responsibility to ensure a

[5] The trial court also presided over the postconviction motion.

complete record, we assume missing portions support the postconviction court's decision); *see also* ***Toliver***, 187 Wis. 2d at 360.[6]

¶30 For the foregoing reasons, we conclude that the postconviction court did not erroneously deny Redmond's ineffective assistance of counsel claims without a ***Machner*** hearing.

II. Motion to Suppress

¶31 Redmond also contends that the trial court erred when it admitted evidence of a text message sent from Redmond's phone, stating "Im finna have to go on da run smh." The trial court found that the message fell under the "plain view" exception to the warrant requirement because the arresting officer saw the message on the screen of Redmond's phone while conducting a lawful pat-down. Redmond argues that the text message could not have been in plain view at the time of his arrest because most touch-screen cellular phones lock and require manipulation to access messages. He also contends that the text message could not have been inadvertently discovered because the act of reading a text message "requires an act of conscious interpretation."

¶32 "In reviewing the denial of a motion to suppress, this court will uphold the trial court's findings of fact unless they are clearly erroneous." *See* ***State v. Ziedonis***, 2005 WI App 249, ¶12, 287 Wis. 2d 831, 707 N.W.2d 565.

[6] A transcript of the conversation with "Pops" appears in the appendix of the appellant's brief. We remind counsel that we are limited to matters in the record, *see* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992), and will not consider any materials in an appendix that are not in the record, *see* ***State v. Smith***, 100 Wis. 2d 317, 322, 302 N.W.2d 54 (Ct. App. 1981), *overruled on other grounds by* ***State v. Firkus***, 119 Wis. 2d 154, 350 N.W.2d 82 (1984). Consequently, we have disregarded that portion of the appendix because it is not a part of the record before us.

"The application of constitutional principles to the facts is a question of law" that we decide *de novo*. *See* ***id.***

¶33 The Fourth Amendment of the United States Constitution and article I, section 11 of the Wisconsin Constitution both protect against unreasonable searches and seizures. *See* U.S. CONST. amend. IV; WIS. CONST. art. I, §11. However, even though "warrantless searches are per se unreasonable under the fourth amendment," they are "subject to a few carefully delineated exceptions" that are "'jealously and carefully drawn.'" ***State v. Boggess***, 115 Wis. 2d 443, 449, 340 N.W.2d 516 (1983) (citation omitted).

¶34 One such exception is the "plain view doctrine." The plain view doctrine requires the following: "'[f]irst, the evidence must be in plain view. Second, the police officer must have a lawful right of access to the object. Third, the incriminating character of the object must be immediately apparent, meaning the police must show they had probable cause to believe the object was evidence or contraband.'" ***State v. Wheeler***, 2013 WI App 53, ¶27, 347 Wis. 2d 426, 830 N.W.2d 278 (citation omitted).

¶35 All three elements are present here. Officer Davis testified that during his pat-down of Redmond, incident to Redmond's arrest, he felt something in Redmond's pocket and removed the item—a cellular phone. Davis looked at the phone and saw that the display screen was lit with the message "Im finna have to go on da run smh." Davis's testimony established that the text message was in plain view and that Davis had "'prior justification' for being in the position to discover" the message. *See* ***State v. Applewhite***, 2008 WI App 138, ¶15, 314 Wis. 2d 179, 758 N.W.2d 181 (citation omitted). Davis's testimony also indicated that he recognized the incriminating nature of the message, telling the court he saw a

message "stating something to the effect that he was gonna go on the run." The trial court found Davis credible. We accept the trial court's findings of fact and do not resolve questions as to the weight of testimony or the credibility of witnesses. *See* ***Johnson v. Merta***, 95 Wis. 2d 141, 151, 289 N.W.2d 813 (1980).

¶36 Moreover, Redmond's argument that the discovery of the text message was not "inadvertent" because it required a conscious interpretation of the text ignores the Wisconsin Supreme Court's holding in ***State v. Guy***, 172 Wis. 2d 86, 492 N.W.2d 311 (1992), which "eliminate[ed] the inadvertence requirement." *See* ***id.*** at 101. The court in ***Guy*** stated "for the plain-view doctrine to apply, the evidence must be in plain view, the officer must have a lawful right of access to the object itself, and the object's incriminating character must be immediately apparent." ***Id.*** As stated, all of those elements are present here. The text message was properly admitted.

III. Insufficient Evidence

¶37 Finally, Redmond contends that there was insufficient evidence to convict him of three counts of intimidation of a witness. We disagree.[7]

¶38 When reviewing the sufficiency of the evidence, we look at whether "'the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.'" *See* ***State v. Zimmerman***, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (citation omitted). "'If any

[7] As we stated earlier, Redmond was initially charged with three counts of witness intimidation. A fourth count was added shortly before trial based on an October 2013 conversation with a woman the State believed to be T.P. Redmond was convicted of all four counts. However, as to the sufficiency of the evidence, Redmond only challenges the first three witness intimidation counts stemming from phone calls made in December 2012.

possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, [we] may not overturn a verdict.'" *See* ***id.*** (citation omitted). It is the jury's duty, not this court's, to sift and winnow the evidence and determine the credibility of the witnesses. *See* ***State v. Block***, 222 Wis. 2d 586, 596, 587 N.W.2d 914 (Ct. App. 1998).

¶39 The first two witness intimidation charges stemmed from phone calls made to T.P., while the third charge stemmed from the phone conversation with "Pops." All three of the phone calls took place in December 2012. The jury heard testimony confirming Redmond's identity on those phone calls. Anna Linden, an investigator with the district attorney's office, testified that she located three phone calls made to T.P.'s phone number. Linden listened to the calls, had them transcribed, and downloaded them onto a CD. Linden stated that she played the phone calls for T.P and Christine Riggs, Redmond's parole agent, both of whom positively identified Redmond's voice. T.P. also identified herself as the recipient of the calls. The relevant portions of the December 2012 phone calls were played for the jury.

¶40 The postconviction court stated that "there is no question in the court's mind that T.P. was pressured to back off and retreat from her original statement to police." None of the transcripts of the relevant phone calls appear in the record. We must therefore assume that the missing portions of the record support the verdict and the postconviction court's conclusion. *See* ***McAttee***, 248 Wis. 2d 865, ¶5 n.1. ("It is the appellant's responsibility to ensure completion of the appellate record and 'when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the [postconviction] court's ruling.'") (citation omitted). The jury heard

the phone calls and heard testimony confirming Redmond's identity on those calls. Thus, we conclude that sufficient evidence supports the jury's verdict.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.