

No. 20-6845

ORIGINAL

Supreme Court, U.S.  
FILED

DEC 12 2020

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

Tony Tran — PETITIONER  
(Your Name)

vs.

State of Wisconsin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Wisconsin Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tony Tran  
(Your Name)

P.O. Box 351  
(Address)

Wausau, WI 53963  
(City, State, Zip Code)

N/A  
(Phone Number)

RECEIVED

DEC 30 2020

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**QUESTION(S) PRESENTED**

1. Whether the circuit court erred when the court ruled that Tran could not elicit evidence to attack the credibility of Tran's accuser.

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

~~W/A~~

State of Wisconsin v. Tony Tran  
Case No. 2019AP290-CR  
(L.C. #2015CF4012)

Judgment entered May 19, 2020

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A	Wisconsin Court of Appeals opinion and Order
APPENDIX B	Decision and Order Denying Motion for Postconviction Relief
APPENDIX C	Supreme Court of Wisconsin Order to Deny Petition For Review
APPENDIX D	
APPENDIX E	
APPENDIX F	

## TABLE OF AUTHORITIES CITED

### CASES

None

### PAGE NUMBER

### STATUTES AND RULES

Wis. stat. §904.03

5, 6

### OTHER

None

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the State of Wisconsin Court of Appeals court appears at Appendix A to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was September 16, 2020.  
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**



### STATEMENT OF THE CASE

Tran Filed a notice of appeal on May 19, 2019. (97) In his appeal, Tran claimed that at trial, the Circuit court erroneously denied Tran's request to enter evidence related to his accuser's credibility.

The facts of the case are that J.V.H. accused Tran of Sexually assaulting her in the early morning hours as she was walking down a street. In contrast, Tran testified at trial that he was looking for a prostitute when he encountered J.V.H. on the street in the early morning and that he and J.V.H. had consensual intercourse. Further, J.V.H. became angry with Tran when she discovered that he had more money on him than the amount he agreed to pay her.

J.V.H. denied that she engaged Tran as a prostitute; however, her cell phone contained messages that were indicative of prostitution activity and the area in question was a high prostitution area.

At trial, Tran sought to elicit testimony from a law enforcement officer that J.V.H.'s boyfriend was involved in prostitution to undermine J.V.H.'s claim that she was not involved in prostitution, and thus, undermine her credibility. The Circuit court denied Tran's request and the Court of appeals affirmed the judgment and order of the Circuit court. Op. at p. 7-8.

## REASONS FOR GRANTING THE PETITION

This Court should grant review because doing so would help develop, clarify and harmonize the law of whether evidence is admissible as defined by Wis. Stat. § 904.03.

The Court's review of this case will provide a better understanding of the admissibility of evidence based on the probative value of that evidence versus that probative value being substantially outweighed by the danger of unfair prejudice, specifically what is meant by "substantial". See Wis. Stat. 904.03

The evidence in question here was whether J.V.H.'s boyfriend was involved in prostitution. J.V.H. denied any involvement in prostitution, but several pieces of evidence undermined her claim. So the evidence in question would further provide information that would undermine J.V.H.'s credibility.

In its analysis, the circuit court asserted, "So the probative value is literally present, but it is low based on the number of inferences that have to be made and based on the insubstantial nature of the source of the information." (118:64). The Circuit Court followed, "It [the evidence] also has the risk of misleading the jury. That's because of the insubstantial nature of the evidence itself... So there is a high degree of risk of confusion of the issues on this point of evidence." (118:65).

However, the evidence cannot be looked at in a vacuum. The jury was aware of other evidence relating to J.V.H. being involved in prostitution even though J.V.H. admittedly denied being involved in prostitution. So, the excluded evidence is relevant to evidence and an issue already before the jury. Additionally, the circuit court stated that the evidence was probative.

The crux of what the circuit court is stating here is that the evidence is probative, just not probative enough to warrant admittance. The circuit court's analysis fails to properly account for the evidence's risk of confusion and then misapplies the risk of confusion to the probative value of the evidence.


Upon inspection, the circuit court's analysis does not lead to the outcome that the evidence's probative value was substantially outweighed by the danger of unfair prejudice. Thus, the circuit court erred, and the court of appeals erred in affirming the circuit court.

For these reasons, Tran believes that the court of appeals misapplied Wis. Stat. § 904.03. Tran asks this Court to grant review to clarify what is admissible evidence as defined by Wis. Stat. § 904.03.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tomy Tran  
  
Date: 12.11.20