

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 22, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP263-CR

Cir. Ct. No. 2012CF2640

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARNELL LOUIS DANGERFIELD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Darnell Louis Dangerfield appeals a judgment convicting him of second-degree sexual assault with use of force, robbery with use of force, and false imprisonment, all as a party to a crime. He also appeals an order denying his motion for a new trial. Dangerfield argues that: (1) the circuit

court misused its discretion by admitting “other acts” evidence; and (2) he received ineffective assistance of trial counsel. We affirm.

¶2 During the jury trial, K.N. testified that she was walking down the street when a car approached her, slowed down, and a man she later identified as Dangerfield pulled her into the back seat of the car. Dangerfield forced her to perform oral sex on him while another man drove. The driver then stopped the car, opened the back door, pulled her pants down, and forced her to have intercourse as he stood behind her. As this was happening, she saw Dangerfield pass the driver a short silver gun. K.N. testified that she was able to escape when she saw a man in a green shirt walking toward the car. She heard a gunshot and saw the man with the green shirt on the ground. K.N. testified that she grabbed her purse as she was trying to run away and struggled with Dangerfield over it until the driver put a gun in her face and directed her to give the purse to Dangerfield. She then fled.

¶3 After K.N. escaped, she ran to a nearby street and found the police. K.N. went to the hospital where DNA evidence was collected. Dangerfield was identified through the DNA evidence. K.N. subsequently identified Dangerfield in a photo array at the police station.

¶4 The second victim, J.W., testified that he was walking in the alley wearing his Green Bay Packers leather jacket when he was approached by someone. The person pointed a small silver revolver at him and demanded his wallet. He swung his cane at the gunman and was shot in the forearm. He testified that he fled to his apartment and called the police. He was not able to identify the gunman.

¶5 Dangerfield moved to suppress a silver handgun the police found in the basement where he was hiding when they arrested him. The circuit court allowed the gun to be admitted as evidence. The jury convicted Dangerfield of second-degree sexual assault with use of force, robbery with use of force, and false imprisonment, all as a party to a crime. Dangerfield was acquitted of first-degree recklessly endangering safety and felon in possession of a firearm. Dangerfield moved for postconviction relief, arguing that the circuit court erred in denying his motion to suppress the gun. The circuit court denied the motion.

¶6 Dangerfield first argues that the circuit court misused its discretion when it denied his suppression motion. Dangerfield contends that the gun had no relevance to the issues being tried because forensic testing showed that the gun found in the basement was not the same gun used to shoot J.W. Dangerfield argues that the gun was therefore impermissible “other acts” evidence. *See* WIS. STAT. § 904.04(2) (2013-14)¹ (“evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith”).

¶7 WISCONSIN STAT. § 904.04(2) “precludes proof that an accused committed some other act for purposes of showing that the accused had a corresponding character trait and acted in conformity with that trait.” *State v. Sullivan*, 216 Wis. 2d 768, 782, 576 N.W.2d 30 (1998). “In other words, [the statute] forbids a chain of inferences running from act to character to conduct in conformity with the character.” *Id.* “[T]he exclusion of other acts evidence is

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

based on the fear that an invitation to focus on an accused's character magnifies the risk that jurors will punish the accused for being a bad person regardless of his or her guilt of the crime charged." *Id.* at 783.

¶8 We reject Dangerfield's argument. The State did not offer the gun as evidence of other bad acts by Dangerfield. It offered the gun to show that Dangerfield used force when he committed the crimes with which he was charged. Both the sexual assault and the robbery charge had threat of force as an element. K.N. testified that Dangerfield had a gun when he assaulted her, although she did not see it until he passed the gun to the driver during the assault. Even though the gun the police found in the basement was not the gun that fired the shot at J.W., Dangerfield could have nevertheless had the gun with him when he committed the offenses because the two men could have had more than one gun. As the circuit court explained in denying the motion for a new trial, it "allowed the evidence to be admitted because the victim testified that this gun looked like that gun that was used against her during the commission of the offenses." Because the State offered the gun into evidence to prove the element of threat of force, rather than Dangerfield's propensity to carry guns, the evidence was not barred by WIS. STAT. § 904.04. The circuit court properly exercised its discretion in admitting the evidence.

¶9 Dangerfield next argues that he received ineffective assistance of trial counsel because his lawyer did not move to suppress the gun. As explained above, the circuit court properly exercised its discretion in admitting the gun as evidence at trial. Failing to raise an argument that does not have merit does not constitute ineffective assistance of counsel. *See State v. Harvey*, 139 Wis. 2d 353, 380, 407 N.W.2d 235 (1987). Therefore, we reject Dangerfield's argument that he received ineffective assistance of trial counsel.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

