

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 21, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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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. 2015AP2141-CR

Cir. Ct. No. 2014CF1718

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEELDRAN L. JACKSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
DONALD R. ZUIDMULDER, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. DeEldran Jackson appeals a judgment convicting him of criminal damage to property, false imprisonment, disorderly conduct and

intimidation of a victim.¹ The victim called 911 to report the crimes. Jackson contends the circuit court erroneously exercised its discretion when it denied his request to present other acts evidence consisting of a citation charging the victim with misuse of 911 on an unrelated incident and police reports from that earlier incident. Because we conclude the circuit court properly exercised its discretion, we affirm the judgment.

¶2 The police reports in question relate to the victim's report that an acquaintance stole her truck. She indicated the truck could be found at a specific address in Chicago. The reports further indicate Chicago police located the vehicle and determined the alleged thief "actually purchased the vehicle or has taken possession of the vehicle and that [the victim] no longer was using the vehicle even though it's still registered to her, but it expired last year." The victim was issued a citation for misuse of the 911 system because she called 911 a second time after being told her report was not an emergency and she should call the non-emergency number.

¶3 Jackson's motion alleged the victim's actions involving the unrelated incident were admissible under WIS. STAT. § 904.04(2)² because they demonstrated the victim's knowledge, plan and opportunity. Jackson's counsel did not elaborate on his claims regarding a plan or opportunity, but claimed the other acts evidence would show the victim's knowledge of the 911 system and how to misuse that system. At the hearing on the motion to admit the other acts

¹ The jury acquitted Jackson of three other charges.

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

evidence, Jackson's attorney stated he did not intend to call the officer who investigated the alleged vehicle theft, but he requested admission of two written statements from the officer, the citation itself and some police reports. Counsel stated, "We're not using it for propensity of acting in conformity. We're using it just to show that in the past there ha[ve] been situations where she has the plan and knowledge of misusing." Counsel argued, "credibility is always at issue and always relevant and definitely goes not to the credibility of propensity but credibility of in the past she's done this." The circuit court denied the request, noting the evidence was being offered to impugn the victim's credibility. She was not charged with a crime as a result of the prior 911 incident and, therefore, proof that she made a false accusation would require a trial within a trial. The court concluded the evidence was only "marginally relevant," and it would distract the jury from deciding the present case.

¶4 Whether to admit other acts evidence is committed to the circuit court's discretion. *State v. Warbelton*, 2009 WI 6, ¶17, 315 Wis. 2d 253, 759 N.W.2d 557. The admissibility of other acts evidence is governed by WIS. STAT. § 904.04(2). Other acts evidence is not admissible to prove the character of a person in order to show that he or she acted in conformity with that character. *Id.*, ¶¶48, 53. Other acts evidence may be admitted to show non-propensity matters such as motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *State v. Sullivan*, 216 Wis. 2d 768, 781, 576 N.W.2d 30 (1998). To determine whether other acts evidence should be admitted, courts employ a three-step analysis, considering: (1) whether the evidence is offered for a permissible purpose under § 904.04; (2) whether the evidence is relevant under WIS. STAT. § 904.01; and (3) whether its probative value is

substantially outweighed by the risk or danger of unfair prejudice under WIS. STAT. § 904.03. *Id.* at 772.

¶5 The circuit court properly exercised its discretion when it denied the motion to admit evidence of the citation and the police reports regarding the alleged auto theft because that evidence fails to meet any of the three criteria listed above. The victim's knowledge of the 911 system is hardly unique, and her own testimony established that she knew calling 911 would result in the police responding. The circuit court correctly concluded the evidence was offered solely to impugn the victim's credibility. Specific instances of the conduct of a witness for the purpose of attacking credibility, other than conviction of a crime or adjudication of delinquency, may not be proved by extrinsic evidence. WIS. STAT. § 906.08(2). That prohibition cannot be circumvented by introducing extrinsic evidence under the guise of calling it the victim's knowledge, opportunity or plan.

¶6 Jackson substantially relies on *State v. Missouri*, 2006 WI App 74, 291 Wis. 2d 466, 714 N.W.2d 595, for the proposition that other acts evidence is relevant if it relates to an accuser's credibility. In *Missouri*, the issue related to a police officer's prior mistreatment of African-American suspects. *Id.*, ¶22. The evidence was relevant because it related to the officer's motive for making a false accusation. *Id.* Here, Jackson did not allege admissibility based on the victim's motive, and there does not appear to be any basis for arguing that the vehicle theft incident showed a motive for falsely reporting Jackson's crimes.

¶7 The circuit court also correctly concluded there was little if any relevance to the proffered evidence. The test for relevancy depends on whether the other acts evidence relates to a fact or proposition that is of consequence to the determination of the action and whether the evidence has a tendency to make the

consequential fact or proposition more probable or less probable than it would be without the evidence. *State v. Barreau*, 2002 WI App 198, ¶35, 257 Wis. 2d 203, 651 N.W.2d 12. Whether the victim called 911 to report a non-emergency and whether the allegation was unsubstantiated are totally unrelated to the elements of the crimes alleged against Jackson.

¶8 Finally, the circuit court properly applied WIS. STAT. § 904.03 when it concluded any minimal probative value the proffered evidence might have was substantially outweighed by the potential for unfair prejudice and confusion. The seemingly inconsistent statements in the police reports that the victim retained title to the vehicle but no longer owned it would have required further testimony to establish whether she made a false report. Conducting such a “trial within a trial” on this tangential issue could have deflected the jury’s attention from the case at hand and confused the jury regarding the true issues presented in this case.

By the Court.—Judgment affirmed.

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

