

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 15, 2005

Cornelia G. Clark
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. 04-0771-CR
STATE OF WISCONSIN**

Cir. Ct. No. 02CF004916

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER A. GOODVINE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: KAREN E. CHRISTENSON, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 KESSLER, J. Christopher A. Goodvine appeals from a judgment entered after a jury found him guilty of first-degree recklessly endangering safety with the use of a dangerous weapon and substantial battery with the use of a dangerous weapon. Goodvine argues that he is entitled to a new trial because he claims that the trial court erroneously admitted evidence concerning a pistol and

refused to admit certain evidence concerning the victim. We reject Goodvine's arguments and affirm the judgment.

BACKGROUND

¶2 Goodvine was charged in connection with an altercation that he admits he had with Crissandra Middleman on August 20, 2002. According to the criminal complaint, Middleman was standing outside her apartment building at 2:30 p.m. when Goodvine approached her and spoke to her. Goodvine became angry with Middleman and pulled a gun from his waistband. He pointed the gun at Middleman and fired; the bullet passed over her head. Goodvine then struck Middleman in the face with the gun and ran away. Middleman, who suffered injuries to her cheek and ear, told police that she did not know Goodvine. Parts of the incident were witnessed by Middleman's two brothers and a neighbor.

¶3 Goodvine testified in his own defense at trial. He claimed that he and Middleman knew each other intimately, having had a brief relationship after they met at a hair salon in early July 2002. He also testified that he and Middleman sold drugs together. Goodvine said that on the day of the altercation, he was riding in a car with another woman when Middleman pulled up behind him in her car and indicated that she wanted to talk with him. Goodvine testified that both Goodvine and Middleman exited their cars and started talking outside Middleman's apartment building.

¶4 According to Goodvine, the two discussed the fact that Goodvine did not want to date Middleman anymore. They argued. Middleman pushed Goodvine. Goodvine pushed her back and Middleman fell backwards, cutting her face on the edge of the brick building. Goodvine testified that at no time during the incident did he have or use a gun.

¶5 The jury found Goodvine guilty of both first-degree recklessly endangering safety with the use of a dangerous weapon and substantial battery with the use of a dangerous weapon. The trial court entered judgment consistent with the verdict. Goodvine was sentenced to eight years of initial confinement and five years of extended supervision on the recklessly endangering safety count, to run consecutive to two years of initial confinement and two years of extended supervision on the substantial battery charge. This appeal followed.

DISCUSSION

¶6 Goodvine challenges several trial court decisions regarding the admission of evidence. The admissibility of evidence is a matter within the trial court's discretion. *State v. Pharr*, 115 Wis. 2d 334, 342, 340 N.W.2d 498 (1983). Consequently, a trial court's evidentiary ruling will not be upset on appeal if the court had "a reasonable basis" and it was made "in accordance with accepted legal standards and in accordance with the facts of record." *Id.* (citation omitted).

A. Evidence concerning the gun

¶7 At trial, the State showed a gun to Darnell Middleman, one of Middleman's brothers who witnessed the altercation. Darnell testified that the gun looked like the gun he saw Goodvine use on August 20, 2002. At the end of the day, the trial court put on the record the fact that a sidebar discussion had taken place at the time the gun was first brought up and was being marked as an exhibit. Goodvine's trial counsel was allowed to restate his objection. He said that although he was aware of the gun's existence because of another pending case in which he was representing Goodvine, he had not been informed that the gun was going to be introduced in this trial. He argued there was no sufficient foundation for the gun. The trial court asked trial counsel to put the objection in writing.

¶8 Goodvine's written objection to evidence concerning the gun focused on his assertion that the gun was inadmissible "other acts" evidence, citing *Whitty v. State*, 34 Wis. 2d 278, 149 N.W.2d 557 (1967). Because the evidence had already been admitted, Goodvine moved for a mistrial.

¶9 The trial court heard oral argument on the motion. The State argued that the evidence was not "other acts" evidence. Rather, the gun was direct evidence of what allegedly occurred with Middleman, and was especially relevant because the gun was unusual-looking. The trial court determined that the evidence was admissible, concluding:

This isn't being offered as other acts evidence.... It's being offered as a concrete piece of evidence in this case....

It is a very unique physical piece of evidence. The victim testified clearly that she saw this.... And we have this gun linked subsequently to the defendant.

To the extent that this might be other acts evidence, it seems to me that it would be offerable to establish identity ... and also absence of mistake [] relating to whether or not there was a gun....

So were it other acts evidence, I think it would be offered for one of those two purposes because it's not being offered for any trait or character of your client or any particular behavior of his, as far as I can see.

I think I ruled before that it is relevant. It's whether or not he had a gun on this particular occasion is clearly of consequence of the determination of the act, and I think this gun with its distinctive character does have probative value.

And I don't think that there is unfair prejudice or confusion of the issues or misleading the jury involved because there is clear testimony from everybody that's been on the witness stand that there was a gunshot.

[There are] three witnesses who say they saw a gun.

So the fact that there is a physical gun being shown to them, I don't think, is that prejudicial. I don't think that it is unfair or misleading to the jury.

So I do think that were it other acts evidence, that it would be admissible on a Sullivan^[1] analysis.

¶10 Subsequently, the State was permitted to introduce evidence that on September 10, twenty-one days after the altercation with Middleman, a public safety officer at the same public housing complex where the altercation with Middleman had taken place saw Goodvine remove a large gun from his waistband and put it in a window well. Goodvine was arrested and, immediately after the arrest, the officer and a Milwaukee police detective recovered the gun from the window well.

¶11 The detective testified that the gun was an unusual .41 caliber pistol, a type that the detective had never seen in twenty-one years as an officer, except in a gun shop. Middleman testified that the gun was the same one that Goodvine had shot at her and hit her with. Both of Middleman's brothers testified that the gun looked like the one they saw Goodvine use on August 20, 2002.

¶12 On appeal, Goodvine argues that the trial court erroneously exercised its discretion when it failed to apply the proper legal standard in its analysis. He contends that the gun is "other acts" evidence and that it was improperly admitted. We reject his argument.

¹ *State v. Sullivan*, 216 Wis. 2d 768, 576 N.W.2d 30 (1998).

¶13 We agree with the trial court’s conclusion that the gun is direct, relevant evidence of the alleged crime.² Evidence concerning the existence and recovery of the gun was ultimately introduced to corroborate the testimony of Middleman and her two brothers. It was relevant evidence showing that Goodvine possessed a gun like that described by the witnesses. The trial court’s admission of this evidence had a reasonable basis and was made in accordance with accepted legal standards and the facts of record. *See Pharr*, 115 Wis.2d at 342. Accordingly, the trial court did not erroneously exercise its discretion when it admitted evidence concerning the gun.

B. Evidence concerning the victim

¶14 Goodvine argues that the trial court erroneously exercised its discretion when it refused to allow the admission of evidence concerning an alleged birthmark on Middleman’s thigh and alleged drug dealing on her part. Both issues were addressed in response to Goodvine’s oral motions *in limine* during jury selection. We examine each in turn.

¶15 Trial counsel for Goodvine sought a search warrant to have an officer view Middleman’s inner thigh. He explained that Goodvine “indicates that in her inner right thigh there is a noticeable birthmark or scar that is reddish in

² Our reading of the trial court’s ruling is that it also held, in the alternative, that the evidence was admissible “other acts” evidence under WIS. STAT. § 904.04(2) (2003-04). Because we affirm the trial court’s decision to admit the evidence as direct, relevant evidence of the crime, we do not consider further whether the evidence was admissible under § 904.04(2). *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (“cases should be decided on the narrowest possible ground”).

All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

color, and that it would only be visible to someone who had close dealings with her.” The trial court denied the request for a search warrant. However, the State spoke with Middleman, who said she has no birthmark on her right thigh and offered to show her thigh to a female bailiff in a private location. The trial court stated: “All right. Then at this point that’s where I’m going to leave it. We do have a female bailiff today, and that can be accomplished if Miss Middleman has no objection, but ... I’m not going to do it right this moment. I’m going to finish voir dire first.”

¶16 The State disagrees that Goodvine was denied the right to admit evidence concerning the birthmark. The State points out that there was no subsequent discussion about the birthmark, and nothing in the record indicates whether the bailiff ever inspected Middleman’s leg. Neither Middleman nor Goodvine was asked about the alleged birthmark. The State observes: “It is impossible to conclude from the record that the trial court ever precluded Goodvine from testifying about, or asking [Middleman] about, the birthmark, scar or tattoo.” Citing *State v. Stanton*, 106 Wis. 2d 172, 316 N.W.2d 134 (Ct. App. 1982), the State argues that Goodvine’s argument should be rejected because, like the defendant in *Stanton*, Goodvine “made no attempt to offer the evidence he claims he had a right to present.” *See id.* at 185.

¶17 Goodvine has not directed this court to any part of the record indicating that he tried to follow through on his request to introduce evidence concerning the birthmark. He also offered no rebuttal to the State’s argument in his reply brief. Unrefuted arguments are deemed admitted. *See State v. Quinsanna D.*, 2002 WI App 318, ¶41, 259 Wis. 2d 429, 655 N.W.2d 752. Based on this admission, as well as the lack of any evidence that Goodvine was actually

denied the right to present the evidence, we conclude that he is not entitled to a new trial on this ground.

¶18 Goodvine also argues that the trial court erroneously denied him the right to present “evidence of Middleman’s drug dealing [that] would tend to impeach the testimony of [Middleman’s neighbor].” He argues: “[T]he proposition for which the drug dealing evidence was offered was to show a relationship between Middleman and [Middleman’s neighbor] (i.e. drug supplier and drug user). This would tend to establish a motive for [Middleman’s neighbor] to support Middleman’s fabricated story.”

¶19 We conclude that Goodvine’s argument is inadequately briefed. Goodvine has not identified the specific evidence that he sought to introduce, discussed how the trial court ruled with respect to that evidence, or explained why the trial court’s reasoning was in error. In fact, the record reveals that Goodvine was allowed to testify that Middleman dealt drugs with Goodvine, so we are unsure which evidence Goodvine claims should have been admitted. His statement of facts provides citations to the trial transcript, presumably referring to times when the trial court apparently addressed the issue, but the lack of specific argument on the trial court’s decision makes it difficult to assess whether the trial court erroneously exercised its discretion. Accordingly, we decline to address this issue. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (we decline to address issues inadequately briefed).

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

