STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case Nos. 2017AP75-CR, 2017AP76-CR, 2017AP77-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LEE VANG,

Defendant-Appellant.

APPEAL FROM A JUDGMENT AND ORDER ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE STEPHANIE G. ROTHSTEIN, PRESIDING

BRIEF AND APPENDIX OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Was the attorney who represented Lee Vang at his trial ineffective for failing to object to evidence of statements previously made by the victim to the police, evidence that Vang was involved in racing cars, and evidence that Vang was shown on a segment of a local news program dealing with persons who were wanted by the police?

The circuit court ruled that Vang failed to prove that his attorney was ineffective in any respect because he failed to prove that he was prejudiced by any of the evidence allowed in without objection.

INTRODUCTION

The only issue on this appeal is whether Vang's attorney was ineffective for failing to object to three items of evidence at his trial, i.e., evidence of statements previously made by the victim to the police, evidence that he was involved in racing cars, and evidence that he was shown on a segment of a local news program dealing with persons who were wanted by the police. Vang failed to prove that his attorney was ineffective because he failed to prove that he was prejudiced by his attorney's failure to object to any of this evidence. Because Vang failed to prove how the absence of any of this evidence would have probably changed the result of his trial in any way, this Court should affirm.

ORAL ARGUMENT AND PUBLICATION

There is no need for oral argument of this appeal because the issues are adequately addressed in the briefs. Publication of the Court's opinion is not warranted because this case involves only the application of settled law to the facts.

STATEMENT OF THE CASE

A. Relevant factual background.

The victim, JV, testified at the trial that on the evening of December 27, 2013, she ran to the police station a couple blocks away from where she lived with her husband, Lee Vang, because she wanted to get to a safe place due to tension between her and Vang. (R. 57:81, 84–87.)[1]

Milwaukee police officer Moua Vang testified that he was assigned to transport duty that evening. (R. 57:41.) Coincidentally, Officer Vang, who was Lee Vang's cousin, was assigned to transport JV to the home of one of JV's friends. (R. 57:43.) But before Officer Vang managed to leave the station with JV, Lee Vang pulled up behind his squad car and demanded that JV get out. (R. 57:43–44.) When JV did not get out, Lee Vang threatened to come to Officer Vang's home and shoot up him and his family. (R. 57:45–49; 58:82.) Lee Vang also threatened to shoot up his own mother's house and to stab her. (R. 58:91–94.)

JV testified regarding another incident that occurred on June 14, 2014. JV said that she and Vang were drinking at a friend's house. (R. 57:94, 96.) When they returned home about 10 p.m., Vang was "buzzed" and became aggressive. (R. 57:96–97.)

Vang told the kids to go to bed. (R. 57:97.) He yelled at JV to come into the bedroom. (R. 57:97.) Fearing Vang's anger, JV complied. (R. 57:98.) Vang started caressing JV's breasts. (R. 57:99.) He slid his hands down her pants, promising it would be just a "quickie." (R. 57:99.) But JV

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[1] Citations are to the record in Case No. 2017AP75-CR unless otherwise noted.

kept telling Vang that she did not want to have sex with him. (R. 57:99.)

When she refused, Vang became angry, complaining that she was having sex with another man but not with him. (R. 57:99–100, 102.) Vang grabbed JV's cell phone out of her hand, threw it against the wall and broke it. (R. 57:104.)

When JV tried to leave, Vang threw her on the bed and punched her right thigh. (R. 57:105.) He threatened to tie her up in the basement and kill her if she called the police. (R. 57:107.) When JV screamed back at Vang, he punched her on the right side of her face with his fist. (R. 57:107–08.) Vang then straddled JV and put his hands on her neck. (R. 57:109.)

Vang apologized, but slid his hand down JV's pants again. (R. 57:110.) JV allowed Vang to have sex with her because she was afraid he would beat her more if she refused. (R. 57:110–12.) But she cried the whole time because she still did not want to do it. (R. 57:112.)

Officer Darryl Anderson testified about the statements JV made to him when she contacted the police, starting with the fact that JV and Vang were drinking at a friend's house, then going on to Vang ordering the children to go to bed, ordering JV to come into the bedroom with him, fondling JV's breasts and putting his hand down her pants, complaining about JV's affair when she refused to have sex, throwing JV's cell phone against the wall, punching JV's thigh, threatening her if she called the police, punching JV in the face, putting his hands around her neck, comforting JV, and finally having intercourse with JV when she

complied because she was afraid of being beaten if she did not. (Case No. 2017AP76-CR, R. 118:9–15, 21–22.)[2]

Vang testified that he earned his living by working as a mechanic, and by building and driving race cars. (R. 58:131.) Testifying about what he did on the day JV said he beat and raped her, Vang said he left a party to attend a car meet. (R. 58:140.) Vang volunteered that "it's called an 'illegal street race.'" (R. 58:140.) Asked to explain this by his attorney, Vang said it involved three or four people racing for money. (R. 58:140.)

On cross-examination by the prosecutor, Vang said that the race was illegal "[b]ecause we go race at abandon buildings where there's no rules, no—no law, if I could say it right, no law in it. I mean, it's basically like we're hiding it, so it's illegal." (R. 59:31.) Vang said he raced at "buildings by abandon streets, like by factories." (R. 59:31.)

When asked where he raced on the night he left the party, Vang said, "Towers." (R. 59:31) Asked were Towers was, Vang said it was a street adjoining 76th Street on the north side of Milwaukee. (R. 59:31.) Vang said that "we make sure there's no people around when we race," and that there were no people around at 10:00 p.m. (R. 59:32.)

Vang said that the participants raced for titles that night. (R. 59:33.) He drove a 1992 Honda Civic. (R. 59:31.) He beat another 1992 Honda Civic he claimed was worth $60,000 because it was fully modified for racing with "illegal" components. (R. 59:34, 36.) About winning, Vang said, "It makes me feel proud of myself for what I built . . . like, have I accomplished something." (R. 59:35.)

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[2] The testimony of Officer Anderson appears by itself in a transcript excerpt from day three of the trial that seems to be found only in the record for Case No. 2017AP76-CR.

Vang testified that he was arrested after JV told the police that he beat and raped her. (R. 59:19.) The clerk of courts testified that Vang was released on bail after being charged with second-degree sexual assault by the use of force, intimidating the victim, threatening force, battery and bail jumping. (R. 58:23–24; 59:20.)

Vang said he knew that a jury trial was set for October 29, 2014. (R. 59:20.) But instead of going to court in Milwaukee, Vang went to Minnesota. (R. 59:20.) When Vang did not appear for trial, a bench warrant was issued for his arrest. (R. 58:15–16.)

Vang testified that he learned about the warrant from his nephew. (R. 59:21.) He said he turned himself in when he found out about the warrant. (R. 59:21.)

On cross-examination, Vang explained that his nephew learned about the warrant because it was "all over Facebook." (R. 59:41.) Vang said that Facebook picked up the information from a broadcast on a Fox 6 News series called "'Wisconsin's Most Wanted.'" (R. 59:42.)

B. Litigation history.

Vang was initially charged with two counts of disorderly conduct for the incidents that occurred on December 27, 2013. (R. 1.) He was released on a signature bond. (R. 2.)

In a separate case, Vang was charged with second-degree sexual assault, intimidation of a victim, battery and bail jumping for the incidents that occurred on June 14, 2014. (Case No. 2017AP76-CR, R. 58.) Vang was also released on bond in the new case. (*See* Case No. 2017AP76-CR, R. 59.) On motion of the prosecutor, the court ordered the two cases consolidated for trial. (R. 53:6.)

When Vang failed to appear for trial, the circuit court issued a bench warrant for his arrest. (Case No. 2017AP76-

CR, R. 110.) Vang eventually appeared in court on December 17, 2014, on the warrant issued October 29. (Case No. 2017AP76-CR, R. 111:3.) Vang was also charged with felony bail jumping for failing to appear. (Case No. 2017AP77-CR, R. 45.)

Vang was finally tried in all three cases beginning May 18, 2015. (R. 56–59.) The jury returned verdicts finding Vang guilty of all the charges in all three cases. (R. 59:113–14.) Vang was sentenced to serve consecutive sentences on all counts totaling 28 years and nine months. (R. 28; Case No. 2017AP76-CR, 84, 88; Case No. 2017AP77-CR, 66.)

Vang brought a postconviction motion covering all three cases on August 15, 2016. (R. 34.) The motion was denied on December 29, 2016. (R. 45.) And Vang has appealed. (R. 46.)

STANDARD OF REVIEW

On review of a claim of ineffective assistance of counsel, the circuit court's findings of fact will be upheld unless they are clearly erroneous. *State v. Thiel*, 2003 WI 111, ¶ 21, 264 Wis. 2d 571, 665 N.W.2d 305. Whether counsel's performance was deficient or prejudicial to the defense are questions of law that are determined independently. *Id.* ¶ 23.

ARGUMENT

Vang failed to prove that the attorney who represented him at his trial was ineffective.

A criminal defendant who claims his attorney was ineffective has a dual burden to prove both that his attorney's performance was deficient and that the deficient performance prejudiced his defense. *Thiel*, 264 Wis. 2d 571, ¶ 18. A claim of ineffective assistance fails if the defendant fails to prove either one of these requirements. *State v.*

Williams, 2006 WI App 212, ¶ 18, 296 Wis. 2d 834, 723 N.W.2d 719.

To prove deficient performance the defendant must overcome a strong presumption that counsel acted reasonably, and establish that counsel's representation fell below an objective standard of reasonableness. *Thiel*, 264 Wis. 2d 571, ¶ 19. There is a range of reasonableness, *Chen v. Warner*, 2005 WI 55, ¶ 37 n.24, 280 Wis. 2d 344, 695 N.W.2d 758, permitting different people to reasonably make different decisions in the same circumstances. *State v. St. George*, 2002 WI 50, ¶ 58, 252 Wis. 2d 499, 643 N.W.2d 777; *State v. Robinson*, 146 Wis. 2d 315, 330, 431 N.W.2d 165 (1988). So to prove deficient performance, the defendant must demonstrate that his attorney's acts were outside the wide range of professionally competent assistance that could be provided in the case. *State v. Johnson*, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990).

To be reasonable is not to be perfect, so a decision can be reasonable even though it is mistaken. *Heien v. North Carolina*, 135 S. Ct. 530, 536 (2014); *State v. Houghton*, 2015 WI 79, ¶ 44, 364 Wis. 2d 234, 868 N.W.2d 143. Thus, the test for ineffective assistance of counsel does not assess the legal correctness of counsel's judgments, but the reasonableness of those judgments under the circumstances of the case. *State v. Weber*, 174 Wis. 2d 98, 115, 496 N.W.2d 762 (Ct. App. 1993). The reasonableness of an attorney's acts is judged deferentially on the facts of the particular case viewed from counsel's contemporary perspective to eliminate the distortion of hindsight. *State v. Carter*, 2010 WI 40, ¶ 22, 324 Wis. 2d 640, 782 N.W.2d 695.

When attempting to show that an attorney performed deficiently by failing to object to evidence, the defendant must establish that there was a reason to object because the evidence was inadmissible. *See State v. Ewing*, 2005 WI App 206, ¶ 18, 287 Wis. 2d 327, 704 N.W.2d 405.

Deficient performance is prejudicial when there is a reasonable probability that the result of the proceeding would have been different without the error, so as to undermine confidence in the reliability of the existing outcome. *Thiel*, 264 Wis. 2d 571, ¶ 20.

It is not enough for a defendant to speculate on what the result of the proceeding might have been if his attorney had not erred. *State v. Flynn*, 190 Wis. 2d 31, 48, 527 N.W.2d 343 (Ct. App. 1994); *State v. Wirts*, 176 Wis. 2d 174, 187, 500 N.W.2d 317 (Ct. App. 1993). The defendant must show actual prejudice. *Wirts*, 176 Wis. 2d at 187. When the defendant alleges that his attorney was ineffective for failing to take some action, he must show with specificity what that action would have accomplished if it had been taken, and how its accomplishment would have probably altered the result of the proceeding. *Flynn*, 190 Wis. 2d at 48.

A defendant is not prejudiced by his attorney's failure to raise a claim or make an argument which would not have been successful. *State v. Marquardt*, 2005 WI 157, ¶ 55 n.13, 286 Wis. 2d 204, 705 N.W.2d 878.

A. Vang failed to prove that counsel was ineffective for failing to object when a police officer testified about the statements made by the victim when she reported that she had been beaten and sexually assaulted by Vang.

1. Counsel did not perform deficiently by failing to object because the victim's prior consistent statements were admissible to rebut an implied charge that she had recently fabricated her testimony.

Prior consistent statements of a witness who testifies at the trial and is subject to cross-examination are admissible to rebut an express or implied charge of recent

fabrication or improper influence or motive. *State v. Peters*, 166 Wis. 2d 168, 176, 479 N.W.2d 198 (Ct. App. 1991); Wis. Stat. § 908.01(4)(a)2.

The victim, JV, testified at the trial and was subject to cross-examination. (R. 57:81 et seq.) At the close of the cross-examination, counsel asked JV, "So if Officer Anderson [who took JV's statement regarding the battery and sexual assault] has anything in his report that is different than what you testified to today, you are testifying off of your recollection from June 14, 201[4], correct?" (R. 57:164.)

This question implied that JV had made statements to the officer that differed from the testimony she gave at the trial. This question implied that JV changed her testimony after she talked to the officer. And since counsel got JV to admit that her allegations were largely a matter of her word against Vang's (R. 57:149), this question implied that JV's credibility was suspect because she recently made up some of her testimony.

Because there was an implied charge of recent fabrication, JV's prior consistent statements to Officer Anderson were admissible to rebut that charge.

Even if there was some uncertainty about the implications of defense counsel's question, the circuit court has discretion to determine the admissibility of prior consistent statements, including the foundational question of whether there has been an express or implied charge of recent fabrication. *See Peters*, 166 Wis. 2d at 175–76. And although the circuit court did not make this determination at the trial since there was no objection to the admission of JV's prior consistent statements, it did make that determination in denying Vang's postconviction motion. (R. 45:3.)

Noting that defense counsel asserted in her opening statement that the police incident report did not correspond

to pictures taken of the victim (R. 57:37), Vang says that his contention was that JV was lying from the beginning. But that would not be inconsistent with an additional contention that JV made up more lies more recently than the ones in the police incident report. JV's prior consistent statements would be admissible to rebut that second contention.

Vang asserts that JV's prior consistent statements were offered for the truth of the matter asserted, but he fails to point to anything in the record that would support that assertion. He also fails to point to any law that would make this assertion relevant. Since evidence that is admissible under Wis. Stat. § 908.01(4) is not hearsay, there is no reason why it cannot be used to prove the truth of the matter asserted. *See State v. Mares*, 149 Wis. 2d 519, 527, 439 N.W.2d 146 (Ct. App. 1989).

Counsel did not perform deficiently by not objecting to Officer Anderson's testimony recounting the consistent statements JV made to him on the night she reported the battery and sexual assault because JV's consistent statements were admissible as an exclusion from the hearsay rule to rebut a charge of recent fabrication.

2. Counsel did not perform deficiently by failing to object because the victim's prior consistent statements were admissible under the rule of completeness to refute Vang's claim that JV made statements to the police that were inconsistent with her testimony at the trial.

Even when prior consistent statements may not be admissible to rebut a charge of recent fabrication, they may still be admissible under the rule of completeness. *State v. Sharp*, 180 Wis. 2d 640, 650–51, 655, 511 N.W.2d 316 (Ct. App. 1993). Under this rule, otherwise inadmissible evidence

may be admitted as a matter of fairness to avoid distorted and misleading trials. *Sharp*, 180 Wis. 2d at 655.

When a party alleges that a witness' prior statements are inconsistent with her trial testimony, the circuit court may admit, in its discretion, the prior statements to show whether they are really inconsistent. *Sharp*, 180 Wis. 2d at 656. An appellate court may affirm on this ground even though it was not considered by the circuit court. *Sharp*, 180 Wis. 2d at 650.

Here, it was implied that JV's trial testimony was inconsistent with her statements to the police. (R. 57:164.) Therefore, the testimony of Officer Anderson recounting the statements JV made to him when she reported that she had been beaten and sexually assaulted was admissible under the rule of completeness to rebut that misleading claim, to rehabilitate the witness and to show that her prior statements were completely consistent with what she said at the trial.

And JV's statements to the police were completely consistent in every significant respect with JV's testimony at the trial. At trial, JV testified that when she and Vang returned home from drinking at a friend's house, Vang was "buzzed" and became aggressive; that he told the kids to go to bed and ordered JV into the bedroom; that he touched her breasts and put his hand down her pants despite her protests that she did not want sex; he became angry, broke her cell phone, punched her thigh, threatened her, then punched her in the face; that Vang put his hands around her neck; that Vang apologized; and that she submitted to sex because she was afraid of him. (R. 57:96–112.)

Officer Darryl Anderson testified about the virtually identical statements JV made to him when she contacted the police, starting with the fact that JV and Vang were drinking at a friend's house, then going on to Vang ordering

the children to go to bed, ordering JV to come into the bedroom with him, fondling JV's breasts and putting his hand down her pants, complaining about JV's affair when she refused to have sex, throwing JV's cellphone against the wall, punching JV's thigh, threatening her if she called the police, punching JV in the face, putting his hands around her neck, comforting JV, finally having intercourse with JV when she complied because she was afraid of being beaten if she did not. (Case No. 2017AP76-CR, R. 118:9–15, 21–22.)

In sum, counsel did not perform deficiently by failing to object to the introduction of JV's prior consistent statements into evidence because they were admissible under the rule of completeness to rebut Vang's claim that they were inconsistent.

3. Vang was not prejudiced by the introduction of the victim's prior consistent statements because they were admissible and because their exclusion would not have changed the result of the trial.

Vang could not have been prejudiced by his attorney's failure to object to the admission of evidence that was legally admissible under either of two different theories. JV's consistent statements were admissible as an exclusion from the hearsay rule to rebut a charge of recent fabrication, and they were admissible under the rule of completeness to rebut Vang's claim that they were inconsistent.

But even if the evidence had not been admissible, Vang would not have been prejudiced by its admission.

Vang asserts that the introduction of JV's prior consistent statements impermissibly bolstered her credibility in a case where credibility was paramount. But even assuming for the sake of argument that JV's credibility might have been bolstered, Vang has not shown how the

result of his trial would have probably been different if her credibility had not been bolstered.

To show prejudice, Vang would have to show that there was a reasonable probability that JV's testimony would not have been believed if her credibility had not been bolstered by her prior consistent statements. If JV's testimony would probably have been believed even without her prior statements, then the introduction of those statements had no effect on the result of the trial.

The circuit court, which had the opportunity to observe JV testify, found that she was completely credible. (R. 45:4.) Vang has not offered anything to show that she was not.

In the absence of any reason to suppose that the introduction of JV's prior statements made the difference between her being believed or not being believed, Vang has failed to show that he was prejudiced by his attorney's failure to object to the evidence because he has not shown that the result would probably have been different if there had been an objection.

B. Vang failed to prove that he was prejudiced by his attorney's failure to object to evidence that he was involved in racing cars.

Vang testified that he earned his living by working as a mechanic, and by building and driving race cars. (R. 58:131.) Testifying about what he did on the day JV said he beat and raped her, Vang said he left a party to attend a car meet. (R. 58:140.) Vang volunteered that "it's called an 'illegal street race.'" (R. 58:140.) Asked to explain this by his attorney, Vang said it involved three or four people racing for money. (R. 58:140.)

On cross-examination by the prosecutor, Vang said that the race was illegal "[b]ecause we go race at abandon buildings where there's no rules, no—no law, if I could say it

right, no law in it. I mean, it's basically like we're hiding it, so it's illegal." (R. 59:31.) Vang said he raced at "buildings by abandon streets, like by factories." (R. 59:32.)

When asked where he raced on the night he left the party, Vang said, "Towers." (R. 59:31) Asked were Towers was, Vang said it was a street adjoining 76th street on the north side of Milwaukee. (R. 59:31.) Vang said that "we make sure there's no people around when we race," and that there were no people around Towers at 10:00 p.m. (R. 59:31.)

Vang said that the participants raced for titles that night. (R. 59:33.) He drove a 1992 Honda Civic. (R. 59:31.) He beat another 1992 Honda Civic he claimed was worth $60,000 because it was fully modified for racing with "illegal" components. (R. 59:34, 36.)

About winning, Vang said, "It makes me feel proud of myself for what I built . . . like, have I accomplished something." (R. 59:35.)

None of this testimony made Vang appear to be a bad person, certainly not the kind of person who would angrily threaten to kill his mother, his cousin and his cousin's family, and who would beat and rape JV, as charged in the several complaints. Vang was not racing cars because he was bad, but because it made him feel good about himself.

Vang may have exaggerated the illegality of his activities to be more boastful about his accomplishments. Racing is illegal on a highway, not at the site of an abandoned building. Wis. Stat. § 346.94(2). Vang, who obviously had trouble expressing himself in English, may have been confusing busy Tower Avenue with the abandoned Tower Automotive factory site. And purses or prizes offered to the participants in a contest determined by skill or speed or to the owners of vehicles entered in such contests are not illegal bets. Wis. Stat. § 945.01(1)(b).

In any event, Vang made it clear that he was not out to hurt anyone. To the contrary, he was concerned that he did not put anyone's safety at risk.

Under these circumstances, the racing evidence could not have changed the result of the trial. No jury would have convicted Vang of the violent crimes with which he was charged just because he raced old Honda Civics.

Vang asserts that he was prejudiced because the jury would be tempted to convict him of several violent crimes because he illegally won a $60,000 car and endangered the community in doing so. But the evidence did not establish either of those facts. As far as the record shows, Vang won an old compact car, which may or may not have been worth what he said it was, fair and square, and did not endanger anybody in the process.

Moreover, Vang fails to establish any link between winning a car in a race, legal or illegal, and any of the crimes with which he was charged. To show prejudice, Vang has to show that the racing evidence demonstrated that he had the kind of bad character that would be consistent with committing the kinds of crimes with which he was charged, thereby making it more likely that he committed them. *See* Wis. Stat. § 904.04(1). Vang has not shown how the evidence that he raced cars, illegally or not, made it any more likely that he threatened to kill, or beat or raped anyone.

The racing evidence was not relevant to anything. It was not relevant to show that Vang in fact committed the crimes with which he was charged, nor was it relevant to show that he had a character that made it likely that he committed those crimes. The evidence was simply superfluous and wholly harmless.

Besides, by the time this evidence came in, the jury already heard evidence about Vang's violent and threatening conduct toward JV and his other relatives, and his flight

from justice. If anyone on the jury was inclined to find that Vang was a bad person, they did not need any additional evidence to draw that conclusion.

Vang failed to prove that his attorney was ineffective by commission or omission for allowing the racing evidence to be introduced.

C. Vang failed to prove that he was prejudiced by his attorney's failure to object to evidence that he was included on a local television station's "most wanted" news segment.

Vang testified that he was arrested after JV told the police that he beat and raped her. (R. 59:19.) The jury was told that Vang was released on bail after being charged with second-degree sexual assault by the use of force, intimidating the victim, threatening force, battery and bail jumping. (R. 58:23–24; 59:20.)

Vang said he knew that a jury trial was set for October 29, 2014. (R. 59:20.) But instead of going to court, Vang went to Minnesota. (R. 59:20.) When Vang did not appear for trial, a bench warrant was issued for his arrest. (R. 58:15–16.)

Vang testified that he learned about the warrant from his nephew. (R. 59:21.) He said he turned himself in when he found out about the warrant. (R. 59:21.)

On cross-examination Vang explained that his nephew learned about the warrant because it was "all over Facebook." (R. 59:41.) Vang said that Facebook picked up the information from a broadcast on a Fox 6 News series called "'Wisconsin's Most Wanted.'" (R. 59:42.)

With no citation to any authority, Vang asserts that this evidence was highly prejudicial and inflammatory

because it portrayed him as being a particularly dangerous fugitive.

But "Wisconsin's Most Wanted" is not "America's Most Wanted," a network television program that dramatizes crime and criminals for viewer value. In fact, "Wisconsin's Most Wanted" is not even a program. It is simply a segment of a local news program that alerts members of the community to watch for people who are wanted by the police in the Milwaukee area.

The record does not reveal what was said about Vang on Fox 6 News. But the WITI Fox 6 News website shows that stories about a dozen or so people wanted by police are short, factual, and unsensational. The website is available on the internet at http://fox6now.com/category/news/most-wanted/?iframe=true&theme_preview=true. A copy of the story on one of the featured suspects is attached as an example. (R-App. 101–02.)

Assuming that the broadcast most wanted news segment is similar to the internet news segment, viewers would have been told nothing more about Vang than jurors were told about him in court, i.e., that he was wanted for a series of serious crimes because he fled instead of facing trial. Being informed that Vang was on the Fox 6 News segment on the most wanted people in the area would not have portrayed Vang as being any more of a bad or dangerous person than the evidence presented at the trial already indicated.

Vang's unsupported hyperbole does not show with specificity how the reference to the local TV news possibly influenced the result of his trial, or how an objection to this evidence would have probably made the result of his trial any different. Failing to prove that he was prejudiced by his attorney's failure to object to the "most wanted" evidence,

Vang failed to prove that his attorney was ineffective for not objecting to it.

Vang failed to prove that his attorney was ineffective in any respect because he failed to prove that he was prejudiced by anything his attorney did or did not do at his trial.

CONCLUSION

It is therefore respectfully submitted that the judgment and order of the circuit court should be affirmed.

Dated May 23, 2017.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,958 words.

Dated this 23rd day of May, 2017.

_____
THOMAS J. BALISTRERI
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 23rd day of May, 2017.

_____
THOMAS J. BALISTRERI
Assistant Attorney General