

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 28, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-0003-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

KAWANE A. WEAVER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: THOMAS H. BARLAND, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Kawane Weaver appeals his convictions for four counts of uttering forged instruments, as a repeater and a party to the crime, after a jury trial. The jury acquitted him on four more uttering counts. Weaver helped three friends try to pass four forged and stolen checks for over \$1,500 within eighteen hours of the checks' theft. Weaver claims that he had no knowledge of

the theft and forgery. Knowledge of the forgery is an element of the crime. *See* § 943.38(2), STATS. Weaver claims that trial counsel furnished ineffective representation in failing to seek a mistrial and severance when codefendant and cousin Anton Dorsey changed his mind and refused to testify. Dorsey would have testified that he never told Weaver about the theft and forgery. Weaver believes that Dorsey's testimony would have exculpated him in a separate trial if trial counsel had moved for a mistrial in the joint trial. We conclude that Weaver has not met the prejudice prong of the two-pronged standards for ineffective trial counsel. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under *Strickland*, Weaver needed to show both deficient performance by trial counsel and resulting prejudice to the trial's outcome. *Id.* We therefore reject Weaver's arguments and affirm his conviction.

Weaver has not shown that trial counsel's performance, if deficient, affected the trial's outcome. First, two accomplices testified that they told Weaver about the theft and forgery. This by itself substantially nullified his cousin Dorsey's testimony. Second, Weaver's acts were demonstrably incompatible with an unawareness of the forgery. States of mind, such as knowledge, may be inferred from the circumstances. *See State v. Schlegel*, 141 Wis.2d 512, 516, 415 N.W.2d 164, 166 (Ct. App. 1987); *see also State v. Ivy*, 119 Wis.2d 591, 598-99, 350 N.W.2d 622, 626-27 (1984). Weaver helped his friends try to pass four checks totaling over \$1,500 in a few hours for the benefit of four jobless persons with no checking accounts. They attempted to use one \$876.23 check to indiscriminately buy expensive clothes without trying them on. The decidedly more probable inference from these facts was that Weaver knew the checks were forged. Rapid, lavish, and indiscriminate spending by penurious friends was demonstrably incompatible with ignorance of the forgery. *Cf. United States v.*

Werner, 160 F.2d 438, 443 (2d Cir. 1947) (receiving stolen property). Viewed from this standpoint, Dorsey's testimony would have had no serious impact. In short, Dorsey's testimony, had he testified, would not have changed the trial's outcome, and Weaver has shown no prejudice under **Strickland**.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

