

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 29, 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. 97-0210**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**PAUL WILLIAMS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Rock County: EDWIN C. DAHLBERG, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Deininger, J.

PER CURIAM. Paul Williams appeals from a judgment convicting him of attempted armed robbery, second-degree recklessly endangering safety and possessing cocaine with intent to deliver and from an order denying postconviction relief. The issue on appeal is whether Williams received effective

assistance of trial counsel. We affirm the trial court's decision to deny relief on that basis.

At Williams's trial, the jury heard testimony that two armed men attempted to rob a convenience store just after 8:00 p.m. on December 31, 1995. One of them wore a black ski mask. After the attempt, witnesses saw the men run into a wooded area near the store. Just after 9:00 p.m., police with a tracker dog found Williams in that area. His clothing closely matched the description of the masked perpetrator, and he had a black ski mask with him. When he was searched, officers found cocaine in his pocket.

Williams did not testify at trial, and stated on the record that he made this choice voluntarily after thoroughly discussing the issue with counsel. The defense relied primarily on the circumstantial nature of the evidence against Williams and the absence of witnesses to positively identify him as the masked perpetrator. The jury found him guilty of all three charges.

Williams brought a postconviction motion alleging that trial counsel ineffectively represented him. At the hearing on his motion, Williams offered the following explanation of his presence in the woods: He was walking near his home earlier that evening when two women in a car asked him for cocaine. He offered to help them if they would give him a ride to an area near the convenience store in question, where he could meet with someone from Chicago he knew as "Booster Man." The women drove him to that area, and Williams got out of the car and walked away to look for Booster Man. When he returned, the women had left, leaving him stranded. Williams entered the woods to walk to his home a few miles away because he believed it would be a shortcut. Williams did not explain why he was moving in a direction away from his home when the police found him.

He described the women as young “mixed breeds” with dark hair, driving a fairly new “nice little car.” He did not know them and had no idea what make of car they drove.

Counsel’s alleged ineffectiveness was her failure to investigate Williams’s proposed alibi defense. In her testimony, counsel could not recall Williams telling her about the two women and the unsuccessful attempt to locate Booster Man.

To prove ineffective assistance of counsel, the defendant must show that counsel’s performance was deficient and that counsel’s errors or omissions prejudiced the defense. *State v. Pitsch*, 124 Wis.2d 628, 633, 369 N.W.2d 711, 714 (1985). Counsel’s performance is measured by the objective standard of what a reasonably prudent attorney would do in similar circumstances. *Id.* at 636-37, 369 N.W.2d at 716. Prejudice results when a reasonable probability exists that in the absence of counsel’s errors the result of the proceeding would have differed. *Id.* at 642, 369 N.W.2d at 719. The supreme court has defined a “reasonable probability” as “a probability sufficient to undermine the outcome.” *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1985)). Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* at 637, 369 N.W.2d at 716. Whether counsel’s performance was deficient and whether it was prejudicial to the defendant are questions of law. *Id.* at 634, 369 N.W.2d at 715.

Williams failed to prove that trial counsel inadequately investigated his proposed alibi defense. Even assuming that he presented it to her—though she could not recall his doing so—Williams cannot reasonably contend that he provided sufficient evidence to prompt an investigation. The best he could do was

vaguely describe two women in a recent model car. For investigative purposes, that information would have been nearly worthless. Additionally, the evidence against Williams, although circumstantial, was overwhelming. In order to be effective, trial counsel need not investigate implausible defenses.<sup>1</sup> As the trial court noted, counsel did the best she could with a nearly hopeless case.

*By the Court.*—Judgment and order affirmed.

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

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<sup>1</sup> *See Strickland v. Washington*, 466 U.S. 668, 691 (1985) (“counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary”).



