

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOVEMBER 7, 1995

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(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1075-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BRYCE L. GARRETT,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Brown County:
RICHARD J. DIETZ, Judge. *Affirmed.*

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

PER CURIAM. Bryce Garrett appeals a judgment convicting him of forging a public document, a judgment of conviction purporting to dispose of pending charges. The State presented evidence that Garrett, a prisoner, sought transfer to a less secure facility. He could not be transferred because he had outstanding charges against him. He submitted a forged judgment in an effort to establish that the pending charges had been resolved. Garrett argues that the

trial court improperly admitted testimony concerning prison disciplinary proceedings and a prison social worker's opinion as to the effect the judgment would have had on Garrett's security classification. He also argues that the forged judgment was not sufficiently identified for admission into evidence, other forged documents were improperly admitted, and the State failed to present sufficient evidence to establish intent to defraud. We reject these arguments and affirm the judgment.

Garrett's arguments that the prison disciplinary hearing documents were not properly authenticated and violate the "best evidence rule" refer to documents that the trial court struck from the record. Therefore, that issue is moot.

The court did not specifically strike testimony relating to the preparation and contents of the disciplinary report. Because the trial was to the court, it is unlikely that Garrett suffered any prejudice from the trial court's failure to strike the testimony as well as the documents. See *Boyles v. State*, 60 Wis.2d 767, 767-68, 211 N.W.2d 512, 512 (1973). Garrett argues that the administrative proceedings have no collateral estoppel effect and are hearsay. The trial court did not apply collateral estoppel or rely on the administrative proceeding in any manner in reaching its verdict.

Garrett contends that the testimony of the prison social worker constitutes speculation. The social worker testified regarding the effect the forged judgment would have had if the forgery had not been discovered. He argues that the witness was transformed from an expert in social work, his real profession, into a "legal expert testifying as to how a case (the reclassification hearing) should be or would have been decided." One of the social worker's duties at the prison was to process requests for early program review and security reclassification. He testified that the documents submitted enhanced Garrett's chances for security reclassification. A prison form had been changed by the registrar to reflect information contained in the fraudulent judgment of conviction. The social worker was qualified to render an opinion on the effect of the fraudulent judgment.

Garrett next argues that the forged judgment was not sufficiently identified to be admitted into evidence. First, he contends that the document

should have been authenticated before being admitted. The State's theory was that the document was not authentic. The argument that a person should authenticate an allegedly forged document is nonsensical. Garrett next challenges the credibility of a witness, another prisoner, who testified that he saw the signed forged judgment in Garrett's typewriter. Garrett argues that the witness gave inconsistent testimony at the preliminary hearing and therefore the forged judgment was not sufficiently identified as the judgment in Garrett's possession. This argument fails for two reasons. First, the allegedly inconsistent testimony was in response to a question that was confusing as to time.¹ His trial testimony establishes that he saw a document similar to the forged judgment in Garrett's possession. Second, it is the function of the trier of fact, not this court, to resolve any inconsistencies in the testimony, decide the credibility of the witnesses and the weight to be given their testimony. See *Cogswell v. Robertshaw Controls Co.*, 87 Wis.2d 243, 249, 274 N.W.2d 647, 650 (1979). The bogus judgment was sufficiently identified to be admitted into evidence.

Garrett next argues that the court improperly admitted a forged letter from a fictitious prosecutor and a bogus criminal complaint relating to the charges that prevented Garrett's reclassification. He argues that the letter and complaint are irrelevant, tending only to prove his propensity to commit forgeries because they are unconnected to the forged judgment. We disagree. These documents establish Garrett's plan or scheme to submit documents that would persuade prison officials that he was eligible for reclassification. They constitute circumstantial evidence of his guilt. These documents are probative of Garrett's motive, intent and plan. Their prejudicial effect does not substantially outweigh their probative value, particularly when trial is to the court.

¹ Q. Okay. I'm gonna show you a transcript from your preliminary testimony, Mr. Clark, and I'm just going to refer you -- I'm now referring to line four.

"QUESTION: Did you have the opportunity on the date in question; in other words a day you told Mr. Lasee that you saw the exhibit -- did you have the opportunity to take that document and look at it personally?"

And you responded?

A. I don't think so.

Finally, the State presented ample evidence to establish intent to defraud. It was not necessary for the State to establish how the forged judgment of conviction got to be placed in the prison's files. A document resembling the forged document was in Garrett's possession. No one else had access to his typewriter and Garrett was known to keep blank copies of forms in the prison dormitory. No one else had a motive for placing false documents in his file. The bogus judgment was sent to the prison on the same day Garrett requested his social worker to begin reclassification procedures. It is reasonable to infer from this evidence that Garrett caused the bogus judgment to be sent to the prison. The social worker's testimony establishes that Garrett would have benefited from the forged judgment had the forgery not been discovered. This evidence is sufficient to establish intent to defraud. *State v. Davis*, 105 Wis.2d 690, 697, 314 N.W.2d 907, 910 (1981).

By the Court.— Judgment affirmed.

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