

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

September 17, 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. 97-1056-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**TEJAN TARAWALY,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Dane County:  
ROBERT CURTIN, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

PER CURIAM. Tejan Tarawaly appeals from a judgment convicting him of numerous charges of medical assistance fraud and theft by fraud. The appellant's brief is disjointed and difficult to comprehend. Primarily using his index as a guide, we have identified the following issues: (1) whether the State sufficiently demonstrated probable cause at the preliminary examination;

(2) whether the prosecutor failed to divulge exculpatory evidence; (3) whether the trial court properly excluded certain exculpatory documents; (4) whether the trial court properly admitted another inculpatory set of documents; and (5) whether Tarawaly received effective assistance from counsel. These issues are either waived or lack merit. We therefore affirm.

Tarawaly cannot now challenge the trial court's probable cause determination. The errorless trial that Tarawaly received cured any defect in the preliminary hearing. *State v. Webb*, 160 Wis.2d 622, 628, 467 N.W.2d 108, 110 (1991).

Tarawaly cannot now claim that the prosecutor suppressed documents. The issue was never raised in the trial court. It is therefore waived. *Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980).

The trial court properly excluded two documents offered by Tarawaly. The first was a letter containing exculpatory facts, written by a former recipient of services from Tarawaly. Out of court statements such as the letter, that are offered in evidence to prove the truth of the matter asserted, are hearsay. Section 908.01(3), STATS. Hearsay is not admissible except under certain limited exceptions. Section 908.02, STATS. The trial court properly determined that the letter did not qualify under any of those exceptions.

The second document at issue concerned Tarawaly's contract with the State, which was the source of all the charges against Tarawaly. The document announced a policy under which Tarawaly asserted his innocence. However, the policy statement was dated March 1993. The trial court concluded that "what [the State's agent] did in 1993 does not bear on what was the appropriate way to bill in the period 1990 through 1992," when Tarawaly

committed his violations. The trial court therefore properly excluded the 1993 document because it did not assist in determining the legality of acts that preceded its existence.

Tarawaly cannot now challenge the decision to admit certain of his letters and other private papers. The documents, all contained in Exhibit 63, were admitted in the trial court without Tarawaly's objection. As a consequence, this issue is also waived. Section 901.03(1), STATS.

Tarawaly has also waived his ineffective assistance of counsel claim. Such claims must be raised in the trial court, and there must be a hearing to allow counsel to explain his actions. *State v. Machner*, 92 Wis.2d 797, 804, 285 N.W.2d 905, 908 (Ct. App. 1979). That did not occur here.

Finally, we note that Tarawaly for the first time raises certain issues in his reply brief. We do not review issues first raised in the reply brief. *Swartwout v. Bilsie*, 100 Wis.2d 342, 346 n.2, 302 N.W.2d 508, 512 (Ct. App. 1981). Nor do we address issues mentioned, but inadequately argued, in Tarawaly's main brief. *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992).

*By the Court.*—Judgment affirmed.

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

