

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 18, 2004

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 03-2657-CR

Cir. Ct. No. 02CF000105

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RANDY J. STAHL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and order of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Affirmed.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Randy Stahl appeals a judgment convicting him of arson with intent to defraud and an order denying postconviction relief. The judgment followed Stahl's *Alford* plea. The dispositive issue is whether the trial court properly denied Stahl's efforts to suppress the principal evidence of his guilt. We agree with the trial court's reasoning and affirm.

¶2 Stahl owned a bar that burned down in a fire of undetermined origin. Shortly afterward, he retained Attorney James Kroner to represent him in matters relating to the fire, including potential criminal liability.

¶3 Accordingly to Kroner, during their first meeting Stahl admitted setting the fire. When the subject of insurance came up, Kroner warned Stahl that he should not file an insurance claim and, if he did, Kroner would be ethically compelled to report his confession to police. Several weeks later Kroner repeated this warning to Stahl, both orally and in writing, and then withdrew from the case.

¶4 Kroner subsequently learned that Stahl had filed an insurance claim, that the insurer had paid a portion of it, and that a portion of it remained pending. Kroner then reported Stahl's confession to the investigating law enforcement agency, resulting in this prosecution. Stahl moved to suppress the State's use of Kroner's testimony, citing the attorney/client privilege, but the trial court denied his motion. Stahl's plea, a postconviction motion to withdraw the plea, and this appeal, followed.

¶5 WISCONSIN STAT. § 905.03(2) (2001-02)¹ provides that a client may bar disclosure of communications between the client and the client's lawyer. However, "[i]f the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud," the attorney client privilege does not apply. WIS. STAT. § 905.03(4)(a). The issue on appeal is whether the State could use Kroner as a witness against Stahl under this exception. Because this issue requires

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

the application of law to undisputed material facts, we decide it de novo, without deference to the trial court's decision. *See State v. Oakley*, 2000 WI 37, ¶6, 234 Wis. 2d 528, 609 N.W.2d 786.

¶6 Stahl contends that the privilege applied to his statements to Kroner because, by the time Kroner disclosed them to police, any crimes he had committed had already taken place. However, the time of disclosure is not the determining factor. Under the plain language of WIS. STAT. § 905.03(4)(a), it is, instead, the client's purpose in retaining counsel that determines whether their communications are privileged. Here, Stahl retained Kroner, at least in part, to help him avoid criminal liability, thus enabling him to fraudulently collect on his insurance. Consequently, Stahl never gained the protection afforded by § 905.03(2). Kroner could have disclosed his confession and testified against him at any time after Stahl's intent to commit a fraud became evident. The fact that disclosure did not occur until the insurance fraud was arguably complete is irrelevant.

By the Court.—Judgment and order affirmed.

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

