

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 20, 2005

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. 2005AP1216

Cir. Ct. No. 2004JV87

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN THE INTEREST OF CHARLES K. B., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

CHARLES K. B.,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Oneida County:
ROBERT E. KINNEY, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Charles K.B., a minor, appeals a judgment of delinquency for burglary and arming himself in the course of the burglary, contrary to WIS. STAT. § 943.10(2)(b). Charles argues that there was insufficient evidence for a fact-finder to find him delinquent beyond a reasonable doubt. Specifically, he argues that there was no evidence that he was ever in the vicinity of the burglarized premises. He also asserts that it would be just as reasonable to infer that his friend, Steve M., committed the burglary and permitted Charles to possess the weapons afterward. We affirm.

Background

¶2 There is little direct evidence regarding Charles's involvement in the burglary. However, there are facts that, when considered together, permit reasonable inferences about what occurred, including Charles's whereabouts at specific times. The relevant facts occur over several days and at different locations, with some factual patterns recurring multiple times.

¶3 On Sunday, October 3, 2004, a white Oldsmobile Bravada was reported stolen in Rhinelander. At approximately 2 a.m. on Monday, October 4, Charles appeared at the home of Peter Lewinski and asked Lewinski to drive him to pick up a friend. Accompanying Charles were two friends, a male and female, and the Bravada was also present. Lewinski then drove the Bravada, with Charles and his two friends as passengers. Charles and his friends spotted police and asked Lewinski to pull over so they could run. Lewinski eventually pulled over,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

and Charles and his male friend ran. Not knowing what to do, Lewinski then stopped at a nearby gas station and called for a friend to pick him up. While there, Lewinski noticed Charles and his friend in an alley near the gas station. At that point, Charles's female friend left the Bravada to go talk with them. Lewinski abandoned the Bravada with the doors unlocked and the keys inside. Police did not stop to investigate.

¶4 At approximately 10:30 p.m. on Monday, October 4, deputy Grady Hartman of the Oneida County Sheriff's Department spotted the stolen Bravada on County Highway A near Sugar Camp. He turned to pursue the vehicle, but when Hartman caught up with the Bravada, it was stopped in a driveway and vacant. Hartman saw two sets of footprints in the frost on the grass. He followed the footprints into a wooded area, but did not locate anyone. There were numerous items in the stolen vehicle, including some of Charles's clothes.

¶5 Donald Schueler resides on County Highway A in Sugar Camp. On Tuesday, October 5, at around 10 a.m., Schueler entered his pole shed and found a girl inside. After asking why she was in his shed, to which she replied that she did not know, he drove her to what he thought was her aunt's house. The girl gave Schueler false information about herself and her parents and she is not otherwise identified in the record. When Schueler later returned to his home, he noticed an empty gun case, which normally held his Dan Wesson .357 revolver, on his table. A Ruger 9mm was also missing from his gun cabinet, along with some boxes of ammunition.

¶6 On Wednesday, October 6, at 3 a.m., Charles appeared at the home of his friend, Michael Golomb, in Merrill. Charles was accompanied by his friend, Steve. Golomb noticed that Charles possessed a black revolver with a

wood grip and Steve had a black semi-automatic handgun. Golomb also noticed that Charles walked around the side of his house before leaving with Golomb's brother-in-law, Scott Wenzlick.

¶7 Sheriff's deputies, who had set up surveillance on Golomb's home, notified nearby officers to be on the lookout for Wenzlick's vehicle. At approximately 11 p.m. on October 6, deputy Dan Heisel of the Lincoln County Sheriff's Department spotted the vehicle and followed it to a motel. Wenzlick stepped out of the driver's side door and walked toward the motel. The other two exited on the passenger's side and ran.

¶8 Wenzlick was arrested, and a search ensued for Charles and Steve. Police found Steve in about an hour. At approximately 12 p.m. on October 7, over twelve hours into the search, police found a Ruger 9mm handgun. A Vilas County sheriff's deputy, Louise Horn, was asked to use her bloodhounds to track the remaining suspect. Her K-9, named Keyotae, was trained in scent discrimination, which permits it to detect a scent off a "scent article" and then track the person connected to that item. Horn brought Keyotae to the Ruger handgun, and commanded Keyotae to search. In approximately twenty minutes, Keyotae led officers six-tenths of a mile to Charles, who was then taken into custody. Charles had a 9mm shell casing in his pocket, which matched the ammunition found in the Ruger.

¶9 After fact-finding hearings, the trial court found that circumstantial evidence supported the conclusion that Charles was in the vicinity of the Schueler residence on October 5, 2004. The court also found that the gun Charles possessed at Golomb's house, which was later found under that house, was Schueler's Dan Wesson .357 revolver. The court was skeptical of the K-9 search

that led to Charles on October 7 and did not make a finding that Charles possessed the Ruger 9mm on the day he was arrested. Nonetheless, the court ultimately concluded that there was sufficient evidence to find Charles delinquent for the Schueler burglary.

Discussion

¶10 Where a defendant claims there was insufficient evidence for a conviction, an appellate court may only reverse if the evidence, viewed most favorably to the state, is so insufficient that no fact-finder, acting reasonably, could find guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). This standard applies regardless of whether the trial court's findings are based on direct or circumstantial evidence. *Id.* at 503. Overall, it is the task of the trial court, not an appellate court, to resolve conflicts in testimony, weigh evidence, and draw reasonable inferences from basic facts to ultimate facts. *Id.* at 506.

¶11 Charles argues that the evidence was insufficient to permit the trial court to infer, beyond a reasonable doubt, that he was involved in the burglary at the Schueler residence. He contends that it would be just as reasonable to infer that his companion, Steve, burglarized the Schueler residence and permitted Charles to possess the firearms afterward. Charles argues that there was no evidence that he was at or near the Schueler residence at the time of the burglary.

¶12 From the facts, the trial court could reasonably infer that Charles was in the stolen Bravada and fled on County Highway A, near Sugar Camp and the Schueler residence, on the night before the burglary. Charles was in the Bravada earlier that day with Lewinski, and the court could reasonably infer that he and his friends reoccupied the vehicle after Lewinski abandoned it. Lewinski

saw Charles near the Bravada when Lewinski left it, and the manner in which Charles and his companions fled near Sugar Camp is consistent with their conduct when riding with Lewinski and when fleeing before their arrest. Further, the court could infer that the girl found in Schueler's pole shed was the same female traveling with Charles and Lewinski the previous day.

¶13 While deputy Hartman testified that he saw footprints in the frost exiting from the driver and passenger side doors of the Bravada near Sugar Camp, which would permit an inference that there were only two occupants, Hartman also testified that there could have been more occupants. Also, Hartman observed the footprints after nightfall and was presumably more concerned with apprehending the individuals than determining exactly how many people made the footprints. From Hartman's testimony and the surrounding circumstances, the court could reasonably infer that there were three occupants.

¶14 While the evidence that Charles actually entered and burglarized the Schueler residence is also circumstantial, the court could reasonably infer this fact beyond a reasonable doubt. As noted above, circumstantial evidence places Charles in the vicinity of the Schueler home. Charles possessed Schueler's Dan Wesson .357 the day following the burglary. Charles and his friend, Steve, who was also seen with a stolen firearm, were seen together shortly after the burglary at Golomb's house. Further, the court could infer that Steve was the male friend accompanying Charles in their ride with Lewinski on the day before the burglary. In light of the fact that Charles and Steve were together before and after the burglary, the trial court could conclude that no reasonable doubt was raised by Charles's theory that Steve might have committed the burglary alone.

¶15 Charles's proximity to the burglarized residence at the relevant time, combined with his possessing a stolen firearm shortly afterward, supports the inference that he was directly involved in the burglary. Considered together, the evidence was sufficient for the court to find, beyond a reasonable doubt, that Charles burglarized the Schueler residence and armed himself while doing so. *See Poellinger*, 153 Wis. 2d at 501.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

