

No. 94-2823-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

ERRATA SHEET

DAVID E. VERHAGEN,

Defendant-Appellant.

Marilyn L. Graves
Clerk of Court of Appeals
231 East, State Capitol
Madison, WI 53702

Peg Carlson
Chief Staff Attorney
119 Martin Luther King Blvd.
Madison, WI 53703

Court of Appeals-District I
633 West Wisconsin Avenue
Milwaukee, WI 53203

Court of Appeals-District II
2727 N. Grandview Blvd.
Waukesha, WI 53188-1672

Court of Appeals-District III
740 Third Street
Wausau, WI 54401-6292

Court of Appeals-District IV
119 Martin Luther King Blvd.
Madison, WI 53703

Jennifer Krapf
Administrative Assistant
119 Martin Luther King Blvd.
Madison, WI 53703

Hon. Marianne E. Becker
515 W. Moreland Blvd.
Waukesha, WI 53188

Gregory M. Posner-Weber
Asst Attorney General
PO Box 7857
Madison, WI 53707

Stephen Centinario
Asst District Attorney
515 W. Moreland Blvd.
Waukesha, WI 53188

Randall E. Paulson
Asst State Public Defender
735 N. Water St., #912
Milwaukee, WI 53202

PLEASE TAKE NOTICE that the attached pages 4 and 5 are to be substituted for pages 4 and 5 in the above-captioned opinion which was released on November 15, 1995.

Dated this 30 day of December, 2006.

Thereafter, Verhagen filed a timely request for substitution of judge against Judge Foster, and the matter was assigned to the Honorable Marianne E. Becker, who presided over the preliminary hearing and the concurrent reverse waiver hearing pursuant to § 970.032, STATS. Following a probable cause determination, Judge Becker addressed the reverse waiver question. The judge allocated the burden of proof to both parties, requiring the State to make a prima facie showing for retention of jurisdiction and requiring Verhagen to demonstrate that a transfer to the juvenile court was warranted.

At the conclusion of the reverse waiver hearing, Judge Becker ruled that the State had carried its burden but that Verhagen had not carried his. The court therefore retained jurisdiction over Verhagen.

Verhagen petitioned this court for leave to appeal the rulings of both Judge Foster and Judge Becker. Verhagen challenged Judge Foster's ruling that the statutory scheme did not violate his constitutional equal protection rights, and he challenged Judge Becker's allocation of the burden of proof. We accepted Verhagen's petition because the burden of proof question presented an issue of first impression. Verhagen's constitutional issues are governed by *State v. Martin*, 191 Wis.2d 647, 650, 530 N.W.2d 420, 421 (Ct. App. 1995), in which the court of appeals rejected the arguments made by Verhagen here. We do not discuss them further in this opinion. We will recite additional facts as we address the appellate issues.

DISCUSSION
BURDEN OF PROOF

On appeal, both parties dispute Judge Becker's "shared allocation" of the burden of proof on the reverse waiver issue. The State contends that the burden was fully Verhagen's; Verhagen contends that the burden was fully the State's. The dispute requires that we construe § 970.032, STATS. The interpretation of a statute presents a question of law which we review independently. *State v. Skamfer*, 176 Wis.2d 304, 307, 500 N.W.2d 369, 370 (Ct. App. 1993).

Section 48.183, STATS., vests the adult criminal court with "exclusive original jurisdiction over a child who is alleged to have violated s. 940.20(1)." Section 970.032(2), STATS., provides that if at the preliminary hearing the adult court finds probable cause to believe that a juvenile has violated § 940.20, STATS., the court must then determine whether to retain jurisdiction or to transfer jurisdiction to children's court. Section 970.032(2) further mandates that the court "shall retain jurisdiction" unless the court finds that all of the following considerations are satisfied:

- (a) That, if convicted, the child could not receive adequate treatment in the criminal justice system.