

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 23, 1996

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.

NOTICE

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

No. 95-3309

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**In the Interest of Michael J.P.,
a Person Under the Age of 18:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

MICHAEL J.P.,

Respondent-Appellant.

APPEAL from an order of the circuit court for La Crosse County:
PETER G. PAPPAS, Judge. *Affirmed.*

EICH, C.J.¹ Michael J.P., a minor, appeals from a dispositional order in a juvenile delinquency case finding him guilty of obstructing an officer, contrary to § 946.41(1), STATS. He claims that the trial court erred in two respects: first, by precluding him from offering evidence on the circumstances

¹ This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

leading up to the issuance of a *capias*--an error he claims violated his constitutional rights to present a defense and to confront witnesses against him; and, second, by improperly excluding "impeachment" evidence relating to the conduct of the officer executing the *capias*.

We reject his arguments and affirm the order.

Michael J.P., a fifteen-year-old, was initially charged with two counts of intentionally discharging a firearm from a vehicle (as a party to the offense). The charges grew out of an incident occurring on February 24, 1995, when shots were fired through the window of a home in West Salem, Wisconsin. The incident was investigated by West Salem Police Officer Robert Schuppel. Schuppel, who gained information from an informant indicating that Michael J.P. had been involved in the incident, contacted the boy at his home on March 1, 1995. Michael was alone at the time, and when his mother arrived the questioning had been completed. Schuppel suspected that Michael was not being truthful about the incident and, as he investigated it further, he came to believe that Michael had given him false information.

A delinquency petition was prepared by the district attorney alleging the two firearm counts, and that original petition formed the basis for the court's issuance of the *capias* on the following day, March 2. The *capias* states that it was being issued because "[i]t appears to the satisfaction of the court that serving the summons will not be effective because ... [t]he parents are withholding the juvenile from police in their residence."²

When Schuppel came to Michael's home on March 2 to execute the *capias*, an altercation apparently occurred between Schuppel and Michael's mother in which she apparently (no evidence was either offered or taken on the point) was knocked to the ground. Michael was taken into custody and the

² Under § 48.28, STATS., a *capias* may issue for a child's arrest in cases where a summons cannot be served, or the party served refuses to comply, or where it appears to the court that service will be ineffectual.

original petition was eventually amended to add a charge of obstructing an officer.³

At trial, during cross-examination of Schuppel, Michael attempted to elicit testimony about the circumstances leading up to the issuance--he challenged the "truthfulness" of the recitation that his parents had withheld him from police. He also attempted to question Schuppel about the events surrounding his execution of the *capias*, notably the altercation with Michael's mother. The trial court sustained the State's objections to both lines of inquiry on relevancy grounds.

The trial proceeded and the jury acquitted Michael of the two firearms counts and found him guilty of obstructing Schuppel's investigation of the case. The court placed Michael on supervision for six months and he appeals. Additional facts will be discussed below.

Michael argues that the court's evidentiary rulings with respect to his questions to Schuppel about the circumstances surrounding the issuance of the *capias* and the altercation with his parents when he was arrested abridged his constitutional right to confrontation and to present a defense. He asserts that Schuppel provided false information to the judge issuing the *capias*. He bases the assertion not on any evidence of record but solely on his counsel's statement that his parents were not interfering with the police and thus there could be no basis for the recitation of such interference in the *capias* unless Schuppel lied to the court. He also maintains that he should have been permitted to present evidence that his mother was "knocked to the ground" during the altercation with Schuppel during execution of the *capias*. He asserts that this would "demonstrate the bias that [Schuppel] had toward Michael and his family" and thus "reflect[] on [his] credibility."

It is well established that a defendant's right to present evidence is not unlimited; the constitution grants the right to present only relevant

³ As will be discussed in more detail below, *infra* note 7, the obstructing charge dates the offense as occurring "[o]n or about March 2, 1995." It was later amended at trial on the motion of the district attorney to reflect an incident date of March 1--the date of Schuppel's discussion with Michael.

evidence. *State v. Pittman*, 174 Wis.2d 255, 275, 496 N.W.2d 74, 83, *cert. denied*, 114 S. Ct. 137 (1993); *State v. Pulizzano*, 155 Wis.2d 633, 646, 456 N.W.2d 325, 330 (1990). It is equally well established that the scope of cross-examination allowed for impeachment purposes is within the trial court's discretion, and that "while the right [of confrontation] is guaranteed by the constitution, the cross-examination of even an adverse witness may be limited by considerations of relevance and materiality." *Chapin v. State*, 78 Wis.2d 346, 352, 353, 254 N.W.2d 286, 289-90, 290 (1977) (citation omitted).

We note also that, under § 906.08(2), STATS., "[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility ... may not be proved by extrinsic evidence." The rule exists because such evidence is collateral and "has a tendency to confuse issues, waste time, and focus the jury's attention on trivial matters." *State v. Amos*, 153 Wis.2d 257, 273, 450 N.W.2d 503, 509 (Ct. App. 1989) (footnote omitted).⁴

The State contends that the evidence Michael sought to elicit from Schuppel was properly disallowed by the trial court as irrelevant and collateral to the issues in the case. We agree.

On the morning of the trial, the district attorney filed a motion in limine seeking an order prohibiting Michael from offering testimony concerning his arrest--presumably about Schuppel's altercation with his mother--on grounds of relevancy and possible prejudice. Opposing the motion, Michael asserted that the notation on the capias that his parents were withholding him from the police was not true and that fact--which he said "could require a couple-hour hearing"--bore upon Schuppel's credibility as a witness in the case.⁵

⁴ A matter is "collateral" within the meaning of the rule if the fact sought to be elicited "could not be shown in evidence for any purpose independently of the contradiction." *State v. Olson*, 179 Wis.2d 715, 724, 508 N.W.2d 616, 619 (Ct. App. 1993) (citation omitted).

⁵ Neither side put on any testimony on the subject either before, during or after the trial. Countering Michael's counsel's assertion that the notation in the capias was untrue, the district attorney informed the court: "[I]t's my understanding that ... Officer Schuppel did have conversations with the father on the phone. He said he would not turn the juvenile over and the capias was used basically as an arrest warrant ordering ... the

The trial court denied the prosecutor's motion in limine, but it also stated, in apparent reference to Michael's arguments, that it was "going to proceed on the presumption that it's a validly issued capias." Michael's counsel then stated that he would be calling both Schuppel and the district attorney to "make a record or an offer of proof regarding the circumstances of the obtaining of this capias" This was never done, however.

At trial, after the State had offered Schuppel's direct testimony, Michael's counsel cross-examined him and, when he broached the subject of the altercation at the time of the execution of the capias, the trial court sustained the State's objection on grounds of relevancy.

The jury was excused and Michael's counsel again argued his position to the court: that both Schuppel's altercation with Michael's mother and the facts surrounding the issuance of the capias "go[] to [Schuppel's] credibility." The trial court restated its ruling, explaining that: (1) the capias was valid on its face and the circumstances of its issuance were not relevant to either the charge or Schuppel's credibility; and (2) evidence of the circumstances surrounding Michael's arrest was irrelevant and unrelated to Schuppel's credibility and further was an "attempt ... to introduce an element of prejudice and passion to the jury"

We have noted above that the extent of impeachment cross-examination, like rulings on evidence generally, is committed to the sound discretion of the trial court, and we have long held that "[w]e will not reverse a discretionary determination by the trial court if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court's decision." *Prahl v. Brosamle*, 142 Wis.2d 658, 667, 420 N.W.2d 372, 376 (Ct. App. 1987) (citation omitted). That rule holds whether or not we ourselves would agree with the trial court's ruling. *Burkes v. Hales*, 165 Wis.2d 585, 590, 478 N.W.2d 37, 39 (Ct. App. 1991).

(..continued)
juvenile into custody" We are thus left with no record on the subject, other than Michael's counsel's reference to a report filed by Schuppel (which is not referenced to the record) indicating that Michael's father had told Schuppel that he would not bring Michael to speak with him without a warrant.

The trial court's explanation of the reasons underlying its rulings on the State's objections to Michael's questioning of Schuppel satisfies us that it exercised its discretion in each instance.⁶ Under the circumstances of this case as we have outlined them above, we cannot say that the result reached by the trial court was unreasonable.⁷

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

⁶ We have held that the trial court's statement of the reasons for a ruling need not be either exhaustive or lengthy: "It is enough that they indicate to the reviewing court that the trial court `undert[ook] a reasonable inquiry and examination of the facts' and `the record shows that there is a reasonable basis for the ... court's determination.'" *Burkes v. Hales*, 165 Wis.2d 585, 590-91, 478 N.W.2d 37, 39 (Ct. App. 1991) (citation omitted) (quoted source omitted). And, as we also have said: "Because the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary decisions." *Id.* at 591, 478 N.W.2d at 39.

⁷ Michael also argues at length that the fact that the amended petition charging the obstructing offense stated the offense date as "on or about March 2, 1995" should also have been put before the jury as evidence bearing on Schuppel's credibility, because Schuppel's contact with Michael occurred on the preceding day, March 1. It is a mountain/molehill argument.

As indicated above, *supra* note 3, the trial court amended the petition to conform to the evidence received at trial, rejecting Michael's request that he be allowed to use the date discrepancy in the petition to attempt to impeach Schuppel by showing that he had "provided false information" to the judge issuing the *capias*. The court, noting that the petition was drafted and signed by the district attorney, not by Schuppel--and there is no evidence that Schuppel played any part in seeking the *capias* from the judge--denied Michael's request to use the document, stating: "I'm not going to allow you to impeach the officer on a document which was not signed by him or drafted by him." Under the principles governing discretionary trial court decisions which we have outlined above, we see no abuse of discretion in the ruling.