

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JUNE 12, 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

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No. 96-0565-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**In the Interest of Timothy L.R.,
A Person Under the Age of 18:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

TIMOTHY L.R.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Winnebago County:
WILLIAM H. CARVER, Judge. *Affirmed.*

BROWN, J. Timothy L.R. appeals from a dispositional order placing him on a one-year formal supervision for knowingly riding as a passenger in a stolen vehicle. See §§ 943.23(4m), 48.12, STATS., 1993-94. The State originally charged Timothy under a statute which had been repealed prior to the date of his offense, and Timothy now claims that the juvenile court's

decision to allow the State to amend the charge was improper. Additionally, while Timothy admitted to the facts alleged in the petition, he argues that the evidence contained in the four corners of the petition was insufficient as a matter of law. We agree that the original petition was inadequate, but nonetheless hold that the juvenile court did not err when it allowed the State to cure the defect. Moreover, based on our review of the juvenile court's voir dire of Timothy, we further hold that he admitted to all of the necessary facts of the charge. We affirm.

The facts alleged in the petition are as follows. Timothy lives in the city of Menasha. He is a friend of Shaun L., who is fourteen. On June 14, 1995, at around 11:45 p.m., Shaun came to Timothy's bedroom window and asked if he wanted to go driving in a van. Timothy agreed. At that time, Timothy knew that Shaun had run away from a treatment center in Green Bay.

Jessica C. was already waiting in the van, and all three drove around the area for some time and then dropped Jessica off in Oshkosh. Shaun and Timothy continued driving in Oshkosh until they were spotted by a police officer, who tried to pull them over. Shaun eventually stopped the vehicle and told Timothy to run away.

We turn first to Timothy's claim concerning the juvenile court's decision to permit amendment of the faulty petition. On July 17, the State filed its first delinquency petition charging Timothy under §§ 943.23(4), 939.05 and 48.12, STATS., 1991-92, for being a party to the crime of taking and driving a vehicle without the owner's consent. Timothy responded on August 30 with a

motion to dismiss the petition on grounds that the State had failed to state a cause of action because § 943.43(4) had been repealed. The juvenile court, however, permitted the State to refile its petition. It reasoned that the State had only made a technical error and that Timothy had not been prejudiced because the original petition provided him with notice of “just exactly what is alleged to have been done wrong here.”

Timothy now challenges the juvenile court's decision to allow the amendment. He specifically argues that the State never placed before the juvenile court any “proof” from which it could find that Timothy was not prejudiced and that the juvenile court never made a specific finding that Timothy was not prejudiced. Moreover, he claims that the State's amended charge of being a passenger in a car knowing that the car is stolen and the original charge of being a party to the crime of operating a vehicle without consent were substantially different. Lastly, in regard to each of these two alleged errors, Timothy asserts that the juvenile court generally applied the “wrong standard” when it determined under § 48.263(2), STATS., that Timothy was not prejudiced by allowing the State to make the amendment.

The State begins its response by arguing that the juvenile court's decision to allow an amendment is committed to its discretion. It points to the plain language of § 48.263(2), STATS., which states that the juvenile court “may allow amendment of the petition” and submits that it confers discretionary authority upon the juvenile court. While neither party provides case law directly addressing the degree of authority vested with the court under this

statute, nor could we find any after our independent research, we are nonetheless persuaded by the State's argument. We conclude that the juvenile court's decision to amend the petition is committed to its discretion. Cf. *Stanhope v. Brown County*, 90 Wis.2d 823, 834, 280 N.W.2d 711, 715 (1979) (discretionary authority of trial court to permit amendments of civil pleadings).

Accordingly, as with our review of other discretionary decision-making, we owe deference to the juvenile court's decision. We look only to whether the juvenile court employed a rational mental process and whether it applied the correct standard to the facts in the record. See *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981).

Moreover, our deferential standard of review affects how we regard Timothy's complaints about the juvenile's court failure to make specific findings. When this court reviews a discretionary decision, we are bound to search the record for a reason to support the court's rulings even when the record does not reveal an explanation. See *State v. Pharr*, 115 Wis.2d 334, 343, 340 N.W.2d 498, 502 (1983).

Applying this deferential standard, we conclude that the juvenile court properly exercised its discretion when it found that Timothy would not be prejudiced by the amendment. The court had before it the original complaint which provided Timothy with the basic factual allegations of the State's case. It thus had a reasonable basis from which to draw a conclusion that Timothy understood what he had done wrong—getting into the car with Shaun—and why this was wrong—the car Shaun was driving was stolen.

We similarly reject Timothy's claim that the juvenile court should not have allowed the State to make the amendment because the amended charge was so different from the original charge. We do not see enough substantive difference between helping a person take a car and drive it, *see* § 943.23(4), STATS., 1991-92, and willingly driving with a person when one knows that the car is stolen, *see* § 943.23(4m). The biggest hurdle for the State under both offenses is proving that the defendant knew the car was stolen. The only real difference is that the amended charge required the State to specifically prove that Timothy was "accompanying" the driver, *see id.*, while the original charge required the State to prove that Timothy helped or somehow aided Shaun to steal the car, *see* §§ 939.05, 943.23(4), STATS., 1991-92. As important, we observe that both the original and amended charges carry the same penalty; both are Class A misdemeanors. *Compare* § 943.23(4), STATS., 1991-92 *with* § 943.23(4m).

Next, Timothy contends that the petition did not set out a sufficient factual basis to support the court's finding of delinquency. After the juvenile court allowed the amendment, Timothy decided to admit to the factual allegations within the petition. While he raises several specific points regarding the differences between what was explicitly stated in the petition and the elements of the amended charge, only one difference gives us any pause.

The affidavit accompanying the petition explained that Shaun told Timothy that the car was stolen only after they had been spotted by the police. Thus, if Timothy only admitted to these facts, then we would face a real issue

about whether the State had proven the elements of the crime because the remainder of the complaint, at best, provided only circumstantial evidence that Timothy actually knew that Shaun had stolen the car when he first got into the car.

Nonetheless, the transcript of the juvenile court's voir dire of Timothy conclusively reveals that he was made aware of exactly what the State alleged and that he admitted to facts sufficient to support the State's charge.

There the court inquired:

THE COURT: What they're alleging here is that on June 15, 1995, in the City of Oshkosh, you intentionally, as a passenger, accompanied another individual who was driving a vehicle and did not have consent to drive that vehicle and you were aware of that at the time. I think that's a fair summary of the allegation ... is that right?

[**THE STATE:**] Yes, it is, Your Honor.

THE COURT: And do you admit or deny that allegation?

[**TIMOTHY:**] Admit.

THE COURT: Do you admit in effect you were a passenger in a vehicle and you guys were driving around, you knew you didn't have consent to drive it, right?

[**TIMOTHY:**] Yes.

Based on the colloquy involving the court, the State and Timothy, we conclude that the juvenile court made a special effort to remove the possible confusion which could have resulted from a literal reading of the petition and ensured that Timothy knew exactly what the State accused him of and why he was being

disciplined. We reject Timothy's argument that his admissions were insufficient.

By the Court. – Order affirmed.

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