

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 14, 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. 2005AP1136**

**Cir. Ct. No. 2004JV268**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN THE INTEREST OF MICHAEL S. R.,  
A PERSON UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**MICHAEL S. R.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Racine County:  
JOHN S. JUDE, Judge. *Affirmed.*

¶1 SNYDER, P.J.<sup>1</sup> Michael S. R. appeals from a dispositional order finding him delinquent on one count of theft and one count of criminal damage to property. Michael contends that the adjudication is based on insufficient evidence and improper disregard for expert testimony. We disagree and affirm the dispositional order of the circuit court.

### BACKGROUND

¶2 Michael does not provide a statement of the facts for our review. Consequently, we turned to the record to ascertain the relevant facts. On February 26, 2004, a theft from a change machine and a soda vending machine at the Taylor Avenue Laundry in Racine took place. City of Racine patrol officers responded to the theft report, and upon arriving at the scene, they determined that the dollar bill changer and the dollar bill slot on the soda machine had been pried apart. Carol Hawes, the owner of Taylor Avenue Laundry, reported to City of Racine Police Investigator Randall Kuzia that total losses from the theft were approximately \$100, based on the average daily use of the change machine. She also reported that the change machine had been damaged beyond repair and estimated that replacing it would cost \$2300.

¶3 Brian Brouwers, Hawes's son, had installed a security system at the laundry and told police that he had digital recording of the incident and was in the process of transferring it onto a disk. Kuzia used the disk to develop photographs in an attempt to identify the suspect.

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

¶4 In the meantime, Investigator Debra Krueger of the Racine Police Department had made contact with Michael on an unrelated matter. This took place on March 10, 2004. Krueger later viewed one of the photographs from the theft at the Taylor Avenue Laundry and recognized the person in the photograph as Michael. She also believed that the jacket and knit cap on the suspect in the photograph were the same as those Michael had been wearing during her interview with him on March 10.

¶5 Kuzia went to speak to Michael at school and brought the photographs along. After Kuzia identified himself to Michael and said why he was there, he placed the computer-generated photographs of the suspect on the counter. Michael indicated the photographs were of him. Michael, however, denied ever being at the Taylor Avenue Laundry.

¶6 Following the police investigation, the State filed a petition asking the circuit court to find Michael delinquent for violation of WIS. STAT. §§ 943.20(1)(a) and 943.01(1), theft and criminal damage to property, respectively. A court trial took place on August 30, 2004. During the trial, the circuit court heard testimony from Hawes, Brouwers, investigators Kuzia and Krueger, and Michael's stepfather. Two expert witnesses also testified: James Yoghortjian, a forensic photography and crime scene photography trainer, testified on behalf of the State; Dr. Fred Anapol, a forensic anthropologist, testified for the defense. Several photographs from the surveillance video and photographs of Michael were moved into evidence. The court ultimately held that Michael was the perpetrator shown in the surveillance photographs. The court ordered that Michael be placed under court supervision for one year, with placement in his parents' home. It further ordered Michael to pay restitution and mandatory

victim/witness fees, and imposed supplemental terms regarding school attendance, counseling and other activities. Michael appeals.

### STANDARD OF REVIEW

¶7 An alleged delinquency, like an adult crime, must be supported by evidence beyond a reasonable doubt. *See* WIS. STAT. § 938.31(1). “[I]t is axiomatic in the law that the state bears the burden of proving all elements of a crime beyond a reasonable doubt.” *State v. Schulz*, 102 Wis. 2d 423, 427, 307 N.W.2d 151 (1981). We apply this same standard to determine the sufficiency of the evidence to support a delinquency determination. Evidence of delinquency may be either direct or circumstantial and is reviewed in the same manner concerning a sufficiency of the evidence challenge. *State v. Poellinger*, 153 Wis. 2d 493, 503, 451 N.W.2d 752 (1990). “[A]n appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the [delinquency adjudication], is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *Id.* at 507.

### SUFFICIENCY OF THE EVIDENCE

¶8 Here, Michael does not challenge the circuit court’s finding that the crimes occurred; rather, his appeal is limited to the sufficiency of the evidence that identified him as the perpetrator of the crimes. We move directly to the identification evidence presented at trial.

¶9 Kuzia testified at trial that once he was assigned to the case he viewed the digital security recording and then produced several photographs from it for identification purposes. After circulating the photographs around the

investigative bureau of the police department, Krueger identified Michael as a possible suspect. Kuzia approached Michael at his high school and explained why he was there. He laid the pictures out on a counter and asked Michael if he knew who was depicted in the pictures. Michael responded, “[T]hat’s me.” Kuzia also testified that Michael confirmed that Michael’s sister lived in close proximity to the Taylor Avenue Laundry. Ultimately, Kuzia concluded that Michael was a suspect in the case based upon the identification by Krueger, Michael’s own identification of himself in the surveillance photographs, and Kuzia’s own identification of Michael as compared to the surveillance photographs.

¶10 Krueger testified at trial that she had identified Michael as the person in the surveillance photographs based upon having met with him in March 2004 for thirty or forty minutes regarding another incident. Krueger stated that she saw the surveillance photographs for the first time after her interview with Michael, and she stated that she made the identification before she knew why the photographs were being circulated.

¶11 Yoghortjian, a forensic criminalist for the City of Racine, testified at trial that he had evaluated fingerprints from the scene of the crime. Yoghortjian testified that none of the prints found at the scene of the crime were a match for Michael. Yoghortjian also testified that there are a number of variables that can affect the quality of a forensic comparison between photographs, such as lighting differences, the types of camera lenses used, the angles of the cameras, the length of time lapses between the photographs, and the scale depicted in each photograph. Yoghortjian stated that forensic comparison between two photographs becomes more difficult the more two photographs differ in regard to these variables.

¶12 Michael's stepfather testified that as far as he knew, Michael did not own a jacket like the one depicted in the surveillance photographs. Michael's stepfather also stated that if Michael had borrowed such a jacket, it never made it into the house.

¶13 Dr. Anapol, a forensic anthropologist, testified that in his expert opinion the surveillance photographs and the photographs of Michael depicted two different individuals. Dr. Anapol reached this conclusion after finding a number of facial characteristics that were dissimilar between the photographs. Dr. Anapol testified that these different facial characteristics included dissimilar chins, significant dissimilarity in the side-to-side length of the orbit of the eyes, dissimilar lower lips, a birthmark in one of the photographs, dissimilar facial hair color, dissimilar nose characteristics, and dissimilar teeth.

¶14 Dr. Anapol admitted that some variables could change the way a person looks from one photograph to the next. Examples of this included a birthmark that Dr. Anapol admitted did not always show up in photographs of Michael, the amount of facial hair that could change due to the passage of time, and facial features such as the thickness of the lower lip that could be changed due to how the subject was posed. Dr. Anapol also testified that he had had to extrapolate some information from the surveillance photographs in order to figure out the size and certain characteristics of the eye, and that he had qualified that in his report.

¶15 The circuit court concluded that Michael was the perpetrator. The court found that the critical components of this identification were the video surveillance, the photographs taken from the video surveillance, and the subsequent corroboration of those photographs. The court was satisfied that

Michael's identification of himself in the surveillance photographs did not take place under circumstances that would have disadvantaged or deceived him. The court was also persuaded by the corroboration of the identification by Krueger, who had met Michael during an unrelated meeting a few days earlier.

¶16 The circuit court was not persuaded that the evidence raised a reasonable doubt that Michael was the person in the surveillance photographs. The court found that there was some doubt as to the reliability of Dr. Anapol's analysis. Specifically, the court referenced Dr. Anapol's need to extrapolate some of the information he relied upon, and also the differences between the photographs Dr. Anapol analyzed, especially in regard to lighting. Also, the court found that some of Dr. Anapol's distinctions were contradicted by visual observations of Michael in court.

¶17 Our review of the record, particularly the photographs and the testimony offered at trial, reveals no basis for reversing the circuit court. Michael is particularly aggrieved by the court's rejection of Dr. Anapol's testimony that Michael is not the person in the surveillance photographs. Again, we find no error. "The trier of fact is not bound by the opinion of an expert; rather, it can accept or reject the expert's opinion." *State v. Kienitz*, 227 Wis. 2d 423, 438, 597 N.W.2d 712 (1999). Viewing the evidence most favorably to the State, as we must, we are persuaded that sufficient evidence was presented to support the circuit court's delinquency order.

## CONCLUSION

¶18 We conclude that there was sufficient evidence for the circuit court to find that Michael was the individual in the surveillance photographs and, therefore, the perpetrator of the crimes charged. Further, the court could reject Dr. Anapol's opinion that the surveillance photographs were not of Michael. "[A]n appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the [delinquency adjudication], is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *Poellinger*, 153 Wis. 2d at 507. Accordingly, we affirm the circuit court's dispositional order finding Michael delinquent on one count of theft and one count of criminal damage to property.

*By the Court.*—Order affirmed.

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



