**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**December 28, 2005**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 2005AP2173-FT** **Cir. Ct. No. 2005JV140**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT II**

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**IN THE INTEREST OF THOMAS B.,**

**A PERSON UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**THOMAS B.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Winnebago County: THOMAS J. GRITTON, Judge. *Affirmed*.

¶1 BROWN, J.[1] Thomas B. was sent to Lincoln Hills School for Boys, a Type 1 secured juvenile correction facility, after the juvenile court ruled that he was a danger to the public and in need of restrictive custodial treatment. Thomas protests this disposition, arguing that the court's decision was driven more by what it perceived to be Thomas' bad attitude than by any evidence of danger to the public. We hold, however, that this discretionary choice by the juvenile court was based on evidence in the record showing Thomas' propensity to commit crime generally and in such a manner as to harm the community at large. We affirm.

¶2 We will start with ***B.M. v. State***, 101 Wis. 2d 12, 303 N.W. 2d 601 (1981). There, the juvenile court's decision to place B.M. in a secure setting was attacked on the basis that the underlying conduct consisted of property crimes; it was argued that property crimes cannot be a danger to the public by definition. *See* ***id.*** at 13, 17-18. The supreme court disagreed and, in so holding, defined danger to the public. *See* ***id.*** at 18. The court quoted federal cases with approval and, in particular, the following passage from ***United States v. Parr***, 399 F. Supp. 883, 888 (W.D. Tex. 1975): "The 'danger to the community' provision of 18 U.S.C. § 3148 permits consideration of the defendant's *propensity to commit crime generally, even where only pecuniary and not physical, harm might result to the community at large*." *See* ***B.M.***, 101 Wis. 2d at 19-20 (emphasis added). The court also consulted Webster's Third New International Dictionary and reached the conclusion that "danger to the public" refers to a person who exposes the public to harm, injury, pain or loss. ***Id.*** at 18.

[1] 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.

¶3 Applying this definition to the facts here, the evidence shows a pattern of behavior that exhibits a propensity to commit crimes generally. Thomas intentionally spilled toilet bowl cleaner outside another boy's bedroom, which is a crime of criminal damage to property. He did this in an attempt to shift blame for an earlier spill to some one else. Had he not ultimately confessed, his action had a propensity for obstructing justice. He smoked marijuana, and on another occasion, marijuana was found in his locker at school. Both are drug crimes. He smashed a beer bottle on a sidewalk, which suggests that he also drank the beer. This incident shows underage drinking and also the possibility of a crime against the public peace. Certainly, there is evidence of a propensity to commit crimes generally, whether they were actually charged or not, whether choate or inchoate.

¶4 The next question is whether this propensity is such that harm might result to the public. Certainly, an intent to damage the property of another exposes the public to harm, as does the smoking of marijuana and keeping marijuana in a locker at school. The beer bottle incident also exposes the public to harm because it is an example of teenage drinking, which the public does not tolerate.[2]

¶5 To all of this, Thomas' reaction is not one of remorse, but rather a cavalier disregard for the rule of law. The choice for the juvenile court was whether to put Thomas off the streets into a secured setting, away from his

[2] While it is true that not all of the incidents giving rise to the propensity determination were discussed by the trial court, and while it is also true that not all of the incidents resulted in prosecution by the State, this court has an obligation to search the record and look for those portions of the record that will provide the rationale for sustaining the trial court's discretionary decision. *See, e.g.,* ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. This is especially true here, where it is quite obvious from the record that the trial court had reviewed and drawn from the report of the social worker and other related reports. The law says to look for propensity. The record shows propensity.

enabling mother who devalues education and thinks rules are "stupid," or wait until Thomas' behavior escalated into something even more serious. The juvenile court had the discretion to make the choice it did.

¶6 Therefore, Thomas' assertion that the juvenile court placed Thomas in a secured setting because of his bad attitude and nothing more is belied by the record showing a propensity to commit crimes generally and in such a manner as to harm the public. And to the extent that the juvenile court did consider Thomas' bad attitude, this court sees nothing wrong with that. Bad attitude showing disregard for the rule of law is the catalyst for a propensity to commit crime. The two are interrelated.

¶7 One final thought. Thomas sees a distinction between the property crime felonies that B.M. committed and the property crime he committed, namely, criminal damage to property. This distinction is without a difference as far as the relevant law is concerned. The law authorizes courts to consider crimes for which a person can be incarcerated for six months or more. WIS. STAT. § 938.34(4m)(a). There is no demarcation for property crimes as opposed to crimes against the person. And the court in ***B.M.*** did not limit consideration of property crimes only to those crimes that were felonies. Rather, the supreme court placed the emphasis where it should be—on propensity. *See* ***B.M.***, 101 Wis. 2d at 20. Moreover, the record in this case shows more than property crime. It shows marijuana possession and use as well as the quite possible use of intoxicating beverages by a minor, not to mention the fact that Thomas' initial intent in the spill incident was to obstruct justice. This court affirms.

*By the Court.*—Order affirmed.

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