

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 7, 2006

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. 2006AP1157-CR

Cir. Ct. No. 2005CF88

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NICHOLAS R. INGLI,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Nicholas Ingli appeals a judgment of conviction for five counts of misdemeanor theft. Ingli argues the State did not meet its

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

burden to affirmatively prove that it did not intentionally delay charging Ingli to avoid juvenile court jurisdiction.² Because the trial court properly exercised its discretion to find there was no intentional delay, we affirm the judgment.

BACKGROUND

¶2 Between January 5, 2005, and January 12, 2005, thefts occurred at five households in Pierce County. On January 30, deputy Jeremy Brookshaw received information that Jeremy Beckler was involved in these crimes. Beckler, who was sixteen at the time the crimes were committed, admitted his involvement in the crimes and told officers he had committed the crimes with Ingli. Beckler provided Brookshaw with details of the crimes. Officers recovered stolen property from Beckler on January 30. That same day, officers contacted Ingli, a sixteen-year-old with a birth date of April 30, 1988. Ingli provided a written statement admitting his involvement in the crimes. Officers recovered stolen property from Ingli.

¶3 On January 31, 2005, investigators Natalie Stockwell and Wade Strain conducted an audio taped interview of Beckler. Beckler provided investigators with descriptions of the homes they entered, the names of certain victims, and the locations where they obtained the property.

² Ingli also asserts the test for determining whether a pre-charging delay violates due process should be expanded or changed. Ingli correctly notes that this is an issue for the supreme court and not for the court of appeals. *See Cook v. Cook*, 208 Wis. 2d 166, 188-89, 560 N.W.2d 246 (1997) (stating the court of appeals is an error correcting court and does not have the authority to overrule published opinions). Therefore, we do not address this issue.

¶4 On Friday, April 15, 2005, the Pierce County Department of Human Services received the juvenile referrals.³ Julie Dollahon, an intake worker for the department, first saw the referrals on Monday, April 18. Dollahon held an intake conference with Ingli on April 27 and then referred the case to the district attorney's office.

¶5 On May 27, 2005, the State filed a criminal complaint in adult court charging Ingli with three counts of burglary and two counts of theft. Ingli filed a motion to dismiss on the ground that the adult court lacked jurisdiction because the State "unreasonably and intentionally delayed in charging this matter until after Mr. Ingli turned 17 years of age on April 30, 2005."

¶6 The court held a hearing on Ingli's motion on September 5, 2005. At the hearing, Strain testified that he referred the case to Dollahon via inter-office mail on April 12, 2005. Strain testified he did not refer the matter until that date because he was waiting for Stockwell's final report.

¶7 Strain testified that when he made the referral, he believed there was sufficient time before the defendants' birthdays for the department of human services to receive the referral, schedule and hold an intake conference, and refer

³ Pursuant to WIS. STAT. § 938.24(1), in juvenile cases, investigating officers refer charges to an intake worker at the department of human services. The intake worker must then inform the juvenile and his or her family of their right to request counseling and may then schedule an intake conference with the juvenile and his or her family. *See* WIS. STAT. §§ 938.24(1m) and (2). The worker then determines whether to close the case, enter into a deferred prosecution agreement, or refer the matter to the district attorney's office. *See* WIS. STAT. §§ 938.24(3)-(5). The worker has forty days from receipt of the referral to take one of these actions. *See* WIS. STAT. § 938.24(5). If the intake worker refers the matter to the district attorney's office, the prosecutor has twenty days to file a delinquency petition, close the case or take other action. *See* WIS. STAT. § 938.25(2).

the matter to the district attorney's office, and for the district attorney to make a charging decision and file charges.

¶8 Stockwell testified she did not file her final report until April 11, 2005. She admitted there was no further investigation after February 7, 2005, and that she was aware of the defendants' impending birthdays. She further testified she tried to make sure the referral to the department was made before Beckler's and Ingli's seventeenth birthdays. Stockwell stated her workload and active cases prevented her from completing the report sooner.

¶9 The court denied Ingli's motion finding investigators did not intentionally delay to avoid juvenile jurisdiction. The Court stated:

The Court simply finds that there was no intentional manipulation of the system to avoid juvenile jurisdiction and to put the boys into adult Court. It's uncontradicted that they indicated they were trying to get this to the intake worker before their 17th birthday. In fact, they did so. Even one of the cases was referred, actually to the D.A.'s office a couple of days before the boy turned, you know, 17.

But I see no evidence of intentional manipulation

DISCUSSION

¶10 Ingli "has a due process right not to be deprived of the potential benefits of juvenile jurisdiction through deliberate state manipulation designed to avoid juvenile jurisdiction." *State v. LeQue*, 150 Wis. 2d 256, 267, 442 N.W.2d 494 (Ct. App. 1989). However, he does not have due process protection from the loss of juvenile court jurisdiction attributable to the "mere passage of time" or negligence. *Id.* at 267-68.

¶11 When a defendant raises a claim of intentional manipulation, the defendant must allege sufficient facts to make a "prima facie showing of

manipulative intent before gaining as a matter of right his or her request for an evidentiary hearing.” *State v. Velez*, 224 Wis. 2d 1, 16, 589 N.W.2d 9 (1999). At the evidentiary hearing, the State bears the burden of proving a lack of manipulative intent to avoid the jurisdiction of the juvenile court. *LeQue*, 150 Wis. 2d at 268.

¶12 Upon review, whether Inqli’s due process right to juvenile court jurisdiction was violated is a question of constitutional fact. *See State v. Lohmeier*, 205 Wis. 2d 183, 191-92, 556 N.W.2d 90 (1996). When reviewing questions of constitutional fact, we first review the trial court’s findings of evidentiary or historical facts. *State v. Smith*, 2002 WI App 118, ¶8, 254 Wis. 2d 654, 648 N.W.2d 15. We will not disturb those findings unless clearly erroneous. *Id.*, ¶13. In making its findings of fact, the trial court is entitled to deference on findings of credibility. *See State v. Carnemolla*, 229 Wis. 2d 648, 661, 600 N.W.2d 236 (Ct. App. 1999) Next, we review the trial court’s application of historical and evidentiary facts to the constitutional principles. *See State v. Bermudez*, 221 Wis. 2d 338, 345-46, 585 N.W.2d 628 (Ct. App. 1998). At this step, we owe no deference to the trial court. *Id.* at 346.

¶13 In this case, the investigators delayed forwarding the case to the department. Strain testified that his delay in forwarding the report to the department was caused by Stockwell’s delay in completing her final report. Stockwell testified that a heavy workload prevented her from completing her report in a timely manner. The trial court had the opportunity to view Stockwell’s testimony and make a determination of her credibility. The trial court accepted her testimony as truthful and found that her heavy workload caused the delay. This determination is not clearly erroneous. The trial court also viewed both investigators’ testimony and concluded they had no intent to delay. Because the

delay was caused by a heavy workload and neither investigator had the intent to delay charges, we conclude there was no manipulative intent.

By the Court.—Judgment affirmed.

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

