

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 6, 2007**

A. John Voelker  
Acting 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. 2006AP2434**

**Cir. Ct. No. 2006JV45**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE INTEREST OF MICHAEL W-F. J.,  
A PERSON UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**MICHAEL W-F. J.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Marinette County:  
TIM A. DUKET, Judge. *Affirmed.*

¶1 PETERSON, J.<sup>1</sup> Michael W-F. J. appeals a non-final order waiving him into adult court. Michael argues the trial court erred in waiving him into adult court because there was no reasonable basis to conclude there were inadequate resources in the juvenile system. Michael also argues the trial court erred because it rejected juvenile court resources based on what it thought would be an appropriate adult sentence. We disagree and affirm the order.

### BACKGROUND

¶2 On August 16, 2006, Michael was charged, in juvenile court, with one count of armed robbery and one count of substantial battery. At the time of the alleged offenses Michael was twenty-four days short of age seventeen. The State filed a petition for waiver of jurisdiction on August 17, 2006. The court held a waiver hearing on September 22.

¶3 At the waiver hearing, the court heard testimony from Stacy Phillips, a juvenile intake worker for Marinette County Health and Human services. Phillips testified that Michael had previously been charged in municipal court in Marinette County with negligent handling of burning material, criminal damage to property, retail theft, three traffic violations, a curfew violation, underage alcohol, and disorderly conduct. She further testified that Michael had been found guilty of larceny in Menominee County, Michigan, and placed on three months' probation. Subsequently, he had problems complying with probation including three probation violations. Phillips also informed the court of a disorderly conduct

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<sup>1</sup> 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.

Leave to appeal a non-final order was granted by this court on October 9, 2006.

charge Michael received for fighting with another student. Phillips testified she did not believe juvenile services would be appropriate for Michael. However, social worker Deborah Cudworth, a client services specialist for the State Public Defender's Office, testified that it would be in Michael's best interest to be placed in either the Lincoln Hills School for Boys or the Serious Juvenile Offender Program.

¶4 The court also heard testimony from Michael's mother who detailed Michael's mental and emotional problems. She admitted Michael could be "a handful" and that because she worked so much, she did not always know where Michael was.

¶5 The court determined the criteria for waiver had been met and granted the petition. The court considered the seriousness of the present offenses as well as Michael's past history of criminal conduct. The court also considered Michael's emotional problems and noted that Michael had not availed himself of past opportunities for counseling. Additionally, the court considered Michael's physical maturity and his adult lifestyle. While the court recognized Michael's emotional immaturity and his hard upbringing, the court did not believe available juvenile resources were appropriate.

## DISCUSSION

¶6 WISCONSIN STAT. § 938.18 provides in part:

(5) [T]he court shall base its decision whether to waive juvenile court jurisdiction on the following criteria:

(a) The personality and prior record of the juvenile, including whether the juvenile is mentally ill or developmentally disabled, whether the court has previously waived its jurisdiction over the juvenile, whether the juvenile has been previously convicted following a waiver

of the court's jurisdiction or has been previously found delinquent, whether such conviction or delinquency involved the infliction of serious bodily injury, the juvenile's motives and attitudes, the juvenile's physical and mental maturity, the juvenile's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.

(b) The type and seriousness of the offense, including whether it was against persons or property, the extent to which it was committed in a violent, aggressive, premeditated or willful manner, and its prosecutive merit.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system, and, where applicable, the mental health system and the suitability of the juvenile for placement in the serious juvenile offender program under s. 938.538 or the adult intensive sanctions program under s. 301.048.

(d) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the court of criminal jurisdiction.

(6) After considering the criteria under sub. (5), the court shall state its finding with respect to the criteria on the record, and, if the court determines on the record that it is established by clear and convincing evidence that it would be contrary to the best interests of the juvenile or of the public to hear the case, the court shall enter an order waiving jurisdiction ....

¶7 Waiver of jurisdiction is within the discretion of the juvenile court. *State v. Elmer J.K.*, 224 Wis. 2d 372, 383, 591 N.W.2d 176 (Ct. App. 1999). The court has discretion on the weight it gives each of the criteria. *Id.* at 384. The court does not need to determine that every statutory criterion supports waiver. *See In re B.B.*, 166 Wis. 2d 202, 209, 479 N.W.2d 205 (Ct. App. 1991). We will reverse a juvenile court's waiver determination only if the record does not reflect a reasonable basis for its determination, or if the court does not state relevant facts or reasons for its decision. *Elmer J.K.*, 224 Wis. 2d at 383.

¶8 In this case, the court undertook a detailed analysis of the statutory factors. The court began by stating “what drives my decision to waive him today is the seriousness of the offense.”

This was a highly, violent aggressive premeditated willful act.

....

[T]he alleged victim here, who unquestionably had two teeth knocked out of her head by the defendant punching her in the face ... and threatened to kill her if she didn't give up the purse.

....

This was sophisticated. It was planned out. It was willful. It was intentional. It was violent. He had to do some thinking about bandanas, or apparently two in number, one on the forehead, one on the chin. This disguising his identity shows a sophistication....

¶9 Michael argues the court relied on improper factors by stating “the overarching theme here is that over several years he's had a lot of contacts on both sides of the river with the juvenile system....” Michael argues this statement is incorrect because he only had contact with the juvenile system in Michigan and not Wisconsin. Even though Michael's contact in Wisconsin was with the municipal system and not the juvenile system, the point of the court's comment remains the same: Michael has an extensive history of offenses and did not avail himself of past opportunities.

¶10 Michael also argues the court's consideration of his age and the type of adult sentence available was improper. On the contrary, Michael's age and the type of adult sentence available were appropriate considerations for the court to

take into account when comparing adult versus juvenile resources. As Phillips, the juvenile intake worker, testified,<sup>2</sup> Michael's age affected how long he could spend in the juvenile system and therefore in her opinion made the juvenile resources inappropriate. The court concluded the seriousness of the offenses required a more extreme response than either the Lincoln Hills correctional program or the serious juvenile offender program could offer.

¶11 In addition, the court analyzed other statutory factors, as set forth earlier in this opinion. We conclude the court properly exercised its discretion in waiving Michael into adult court.

*By the Court.*—Order affirmed.

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

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<sup>2</sup> Michael argues Phillips' testimony was inadequate because she did not know him personally and was not familiar with the Michigan system. He argues the court should have placed greater weight on the testimony of social worker Deborah Cudworth, a client services specialist for the State Public Defender's Office. However, the trial court, not the appellate court, is the ultimate arbiter of weight and credibility. See WIS. STAT. § 805.17(2). Its assessments will not be overturned on appeal unless they are inherently or patently incredible. *Chapman v. State*, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975). That is not the case here.

