

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 2002

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. 02-2626
STATE OF WISCONSIN**

Cir. Ct. No. 02-JV-143

**IN COURT OF APPEALS
DISTRICT III**

IN THE INTEREST OF YING N.V.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

YING N.V.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
SUE E. BISCHER, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Ying N.V. (DOB June 28, 1986) appeals from a juvenile court order waiving juvenile jurisdiction over a petition alleging two

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted. Petition for leave to appeal a nonfinal order was granted October 7, 2002.

counts of theft, contrary to WIS. STAT. § 943.20(1)(a), and four counts of criminal damage to property, contrary to WIS. STAT. § 943.01. Ying was charged as a party to all the crimes pursuant to WIS. STAT. § 939.05.

¶2 Ying argues (1) the juvenile court erred by finding prosecutive merit on the charges of theft and criminal damage to property; and (2) the juvenile court erroneously exercised its discretion by waiving juvenile jurisdiction. We reject these arguments and affirm the waiver order.

PROSECUTIVE MERIT

¶3 Ying first argues the juvenile court erred by determining that the juvenile petition established prosecutive merit. He contends the petition lacked sufficient facts to show that he committed any of the charged offenses either directly or as a party to the crimes. We disagree.

¶4 WISCONSIN STAT. § 938.18(4)(a) provides that “[t]he court shall determine whether the matter has prosecutive merit before proceeding to determine if it should waive jurisdiction.” The juvenile court may determine whether the matter has prosecutive merit solely on the basis of the delinquency and waiver petitions if the petitions contain adequate and detailed information concerning the juvenile’s alleged violations of state criminal law and demonstrate a guarantee of trustworthiness. *P.A.K. v. State*, 119 Wis.2d 871, 886, 350 N.W.2d 677 (1984).

¶5 The determination of prosecutive merit is functionally similar to the determination of probable cause at a preliminary hearing. *T.R.B. v. State*, 109 Wis. 2d 179, 189-90, 325 N.W.2d 329 (1982). The determination of probable cause at a preliminary hearing is a screening device to assure that the accused has

not been prosecuted too hastily or maliciously, and that there exists a substantial basis for bringing prosecution. *State v. Blalock*, 150 Wis.2d 688, 697, 442 N.W.2d 514 (Ct. App. 1989). The court must decide whether facts and reasonable inferences support the conclusion that the defendant probably committed the offense. *Id.* A judge conducting a preliminary hearing is not to choose between conflicting facts or inferences, or weigh the State's evidence against the evidence favorable to the defendant. *State v. Koch*, 175 Wis. 2d 684, 704, 499 N.W.2d 152 (1993).

¶6 Additionally, the same principles governing the sufficiency of criminal complaints apply to the sufficiency of juvenile petitions. *Sheboygan County v. D.T.*, 167 Wis. 2d 276, 283, 481 N.W.2d 493 (Ct. App. 1992). Whether a petition is sufficient is a question of law we decide without deference to the juvenile court's ruling. *Id.* at 282-83. The test for sufficiency is whether the complaint, or in this case the delinquency petition, was minimally adequate in setting forth the essential facts establishing probable cause. *State v. Adams*, 152 Wis. 2d 68, 73, 447 N.W.2d 90 (Ct. App. 1989). We evaluate the adequacy of a complaint from the standpoint of common sense rather than in a hypertechnical manner. *Id.*

¶7 A summary of the delinquency petition is that the Green Bay police received a report that on the late evening hours of May 24 and early morning hours of May 25, 2002, twenty-one cars had been broken into and personal property had been stolen. One of the items stolen was a faceplate from a car's Pioneer radio. On May 25, the police stopped a vehicle that had been identified by its license plate approximately twelve hours earlier as the car used by four young Asians in an unsuccessful attempt to steal property from one of these cars. They found Ying sitting in the back seat and observed next to him a Pioneer radio

faceplate stolen from one of the cars the night before. In addition, property stolen from other vehicles the night before, such as CDs and stereo equipment, was found in the car. Ying also matched the general description of the young Asians who had been observed breaking into a car twelve hours earlier.

¶8 While this evidence is circumstantial, it is sufficient to establish prosecutive merit. The unexplained possession of recently stolen goods raises an inference the possessor is guilty of theft. *Gautreaux v. State*, 52 Wis. 2d 489, 495-96, 190 N.W.2d 542 (1971). From this inference, it was reasonable for the trial court to conclude for purposes of determining prosecutive merit that Ying had participated in the thefts, either as a person who was a party to the crime of theft or as a party to the crime of knowingly and intentionally retaining possession of stolen property. As the trial court correctly observed, an innocent explanation may exist for Ying's presence in the car with the stolen property, but the waiver hearing was not the place to debate the weight of the evidence. Thus, it was reasonable for the trial court to conclude there was prosecutive merit from the fact that a short time after the car thefts, Ying was found in a vehicle with the stolen property; the stolen property was next to Ying; the police found Ying in the car identified as used in one of the attempted thefts; and Ying fit the general description of persons observed in the attempted theft from one of the cars. This court is also satisfied the information demonstrates a guarantee of trustworthiness.

DISCRETION TO WAIVE JUVENILE JURISDICTION

¶9 Next, Ying contends the trial court erroneously exercised its discretion by waiving juvenile jurisdiction. Waiver of juvenile jurisdiction under WIS. STAT. § 938.18 lies within the sound discretion of the juvenile court. *See B.B. v. State*, 166 Wis. 2d 202, 207, 479 N.W.2d 205 (Ct. App. 1991). We will

uphold a discretionary determination if the record reflects that the juvenile court exercised its discretion and there was a reasonable basis for the decision. *Id.* We will reverse a juvenile court's waiver determination if and only if the record does not reflect a reasonable basis for the determination or a statement of the relevant facts or reasons motivating the determination is not carefully delineated in the record. *J.A.L. v. State*, 162 Wis. 2d 940, 961, 471 N.W.2d 493 (1991).

¶10 The paramount consideration in determining waiver is the best interests of the child. *State v. C.W.*, 142 Wis. 2d 763, 767, 419 N.W.2d 327 (Ct. App. 1987). However, the court may still order waiver in the proper exercise of its discretion even where the juvenile court has determined that waiver is not in the best interests of the child. *B.B.*, 166 Wis. 2d at 209. It is within the juvenile court's discretion as to the weight it affords each of the factors under WIS. STAT. § 938.18(5).² See *J.A.L.*, 162 Wis. 2d at 960. In the exercise of its discretion, a

² WISCONSIN STAT. § 938.18(5), provides:

(5) If prosecutive merit is found, the court shall base its decision whether to waive 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.

(continued)

court may reach a conclusion that another court might not reach, but the decision must be one that a reasonable court could arrive at by considering the relevant law, the facts, and a process of logical reasoning. *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶11 Here, the trial court carefully weighed the factors for and against waiver. It observed that at the time of the waiver hearing, Ying's age was sixteen years and four months. The court was also concerned with the time it would take to resolve the case. It observed that if Ying were found guilty after a trial, there would be even less time for juvenile supervision. The court also considered Ying's absence of a prior record, but noted there were numerous reports of his being a runaway. Ying's pattern of living and personality weighed against him. He did not go to school, did not stay at home and did not want to give up his gang association. The court also noted the type of crimes alleged in the petition were premeditated and willful as part of a crime spree.

(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 wilful 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.

¶12 Ying focuses his appeal partly on the court's statements regarding Ying's move to Minnesota where the court expressed its concern that juvenile supervision may not be accepted. He contends the court was wrong in assuming juvenile supervision may not be accepted in Minnesota and cites the Interstate Compact for the proposition that supervision must be accepted if Ying's supervision were transferred to another state. However, the record demonstrates the court was not only concerned about the possibility of supervision in Minnesota, but was more concerned about the length of juvenile supervision in light of Ying's age and the problems associated with his desire to continue gang affiliation. It recognized that Ying needed a longer probation period and that the adult system would provide the needed supervision and services. Essentially, the court concluded that the services offered within the juvenile system could not address Ying's needs.

¶13 Thus, this court is satisfied the trial court addressed the evidence in light of each relevant statutory factor and reasonably exercised its discretion when granting the waiver.

By the Court.—Order affirmed.

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

