COURT OF APPEALS DECISION DATED AND FILED

August 21, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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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.

No. 00-3076-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RHONDA SPAULDING,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

¶1 PER CURIAM. Rhonda Spaulding appeals from the judgment convicting her of first-degree sexual assault, contrary to WIS. STAT. § 948.02(1).[1] Spaulding argues that the bindover should not have occurred because the child-victim's videotape, the primary evidence used against Spaulding at the preliminary hearing, was improperly admitted. She also submits that the trial court erroneously exercised its discretion in refusing to conduct an *in camera* inspection of the victim's treatment records and in refusing her request for an independent psychological examination of the victim. Finally, Spaulding claims that the trial court's sentence was unduly harsh and unconscionable. We affirm.

I. BACKGROUND.

¶2 The victim of this crime, E.B., born on March 1, 1991, suffers from attention deficit disorder for which he takes medication. He is also mildly retarded, has a speech impediment, and has experienced some learning disabilities as well as some emotional problems. Due to discord in his family, E.B. spent a great deal of time with Spaulding and her husband, who ran a church out of their home. Often E.B. would stay overnight with the Spauldings.

¶3 On January 6, 1998, while at home, E.B. witnessed a news report on television about Spaulding's husband, who had been recently arrested for fondling young girls. The newscast reported the charge and stated that Spaulding's husband was in jail. E.B. then asked his mother why Spaulding was not also in jail. Following up on his comment, E.B.'s mother learned that on several occasions Spaulding had touched E.B.'s penis and engaged in other indecent conduct with him. The police were called and the next day, E.B. was taken to Children's Hospital, where Liz Ghilardi, a social worker, interviewed him and videotaped the interview.

¶4 At the preliminary hearing, E.B. was called to testify and was initially questioned by the court commissioner. At the end of the questioning, the commissioner stated that E.B. was unable to answer the questions asked of him that were designed to show that he understood the difference between the truth and a lie. The commissioner commented:

> [H]e just doesn't know what the word truth means. Does he know what the concept is? That's the question that the Court is wrestling with and there were periods in the Court's conversation with the young man where the Court was convinced that he knew what we call a lie and what he doesn't call a lie, but whether or not he knew that that concept was wrong and that he should not do it because if he does it he could be punished, he said he could be spanked, which to a six year old is a big punishment, so the Court is convinced that there is a possibility that he knows the concepts of what it is to tell the truth, what it is to tell a lie, he just can't articulate what those words mean….

The commissioner then agreed to postpone the preliminary hearing to allow the State to submit, pursuant to WIS. STAT. § 908.08(5)(b), the earlier obtained videotape in lieu of E.B.'s live testimony. Although Spaulding objected to its use, her objection was overruled. After viewing the videotape and hearing the testimony of an investigating officer, the commissioner bound Spaulding over for trial, concluding that probable cause had been established that Spaulding had committed at least one felony. Spaulding brought a motion in the trial court renewing her objection to the bindover, which was also denied. Spaulding's attempt to bring an interlocutory appeal on this issue was unsuccessful.

¶5 Before trial, Spaulding also filed motions seeking to have the court conduct an *in camera* examination of all of E.B.'s treatment records, and seeking to have an independent examination of E.B. by a psychologist. These motions were also denied. A jury trial was held at which E.B. testified and the videotape was shown. Spaulding was found guilty. The trial court sentenced Spaulding to thirty years' imprisonment.

II. ANALYSIS.

¶6 Spaulding raises four issues. She claims the preliminary hearing bindover, relying principally on E.B.'s videotape, was improper and, consequently, the trial court did not have jurisdiction over her. She also argues that the trial court erroneously exercised its discretion in denying both her motion requesting that the trial court conduct an *in camera* examination of E.B.'s treatment records, and her motion seeking to have an independent examination of the victim. Lastly, she submits that the trial court's sentence was unduly harsh.

A. *The preliminary hearing bindover was proper.*

¶7 Spaulding argues that the trial court erred in admitting the videotape of E.B. at the preliminary hearing. She submits that because there was no proper bindover at the preliminary hearing, the trial court had no jurisdiction over her. *See* WIS. STAT. § 970.03(a). Spaulding concedes that WIS. STAT. § 908.08(5)(b) does not require a child to be produced when a videotape is used at a preliminary hearing; nevertheless, she argues that because E.B. did testify and had difficulty explaining the difference between telling the truth and telling a lie, the State was obligated to prove that E.B. fell within the witness requirements found in WIS. STAT. §§ 906.03(1) and 908.08(3)(c).

¶8 WISCONSIN STAT. § 906.03(1) requires: "Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the witness's duty to do so." WISCONSIN STAT. § 908.08(3)(c) reads:

> **(3)** The court or hearing examiner shall admit the videotape statement upon finding all of the following: …. (c) That the child's statement was made upon oath or affirmation or, if the child's developmental level is inappropriate for the administration of an oath or affirmation in the usual form, upon the child's understanding that false statements are punishable and of the importance of telling the truth.

Spaulding submits that because the underpinnings for these statutory requirements were not met, the videotape was inadmissible under § 908.08(5)(b), and she is entitled to have the criminal charge dismissed.

¶9 The standard of review for disputes of this nature is found in ***State v. Jimmie R.R.***, 232 Wis. 2d 138, 158, 606 N.W.2d 196 (Ct. App. 1999):

> Ordinarily, a determination of whether a child understands that false statements are punishable is a question of fact. However, since the only evidence on this question is the videotape itself, we are in as good a position as [the commissioner] at the preliminary hearing and [the judge] at the trial proceedings to make that determination. As a result, the question becomes one that we review de novo.

(Citations omitted.) Thus, we decide this issue *de novo*.

¶10 Spaulding also argues that because of the State's difficulties establishing that E.B. knew the difference between testifying truthfully and lying, E.B. was "unavailable" and, therefore, the videotape was inadmissible, inasmuch as only videotapes of "available" child witnesses are admissible under WIS. STAT. § 908.08(1).

¶11 This dispute requires us to interpret a statute. The interpretation of a statute is a question of law which this court reviews *de novo*. ***State v. Dean***, 163 Wis. 2d 503, 510, 471 N.W.2d 310 (Ct. App. 1991).

¶12 We first address whether E.B. was "available," a prerequisite for admission of a child witness's videotape. Spaulding maintains that the videotape was not admissible because E.B. was "unavailable" due to a failure by the commissioner to ascertain whether E.B. understood the difference between truth and falsehood.

¶13 There can be little dispute that the questioning by the commissioner was unproductive and failed to establish whether E.B. understood the concepts of truthfulness and falsehood.[2] This complication, however, did not render E.B. "unavailable." The definition of "unavailability" is found in WIS. STAT. § 908.04:

> **Hearsay exceptions; declarant unavailable; definition of unavailability. (1)** "Unavailability as a witness" includes situations in which the declarant:
> (a) Is exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
> (b) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the judge to do so; or
> (c) Testifies to a lack of memory of the subject matter of the declarant's statement; or
> (d) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
> (e) Is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.
> **(2)** A declarant is not unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

E.B. did not fall under any of the categories listed. Therefore, he was "available." Moreover, it is questionable whether E.B.'s availability was even a relevant issue at the preliminary hearing. WISCONSIN STAT. § 908.08(5)(b) states: "If a videotape statement under this section is shown at a preliminary examination under s. 970.03 and the party who offers the statement does not call the child to testify, the court may not order under par. (a) that the child be produced for cross-examination at the preliminary examination." Here, the State attempted to elicit testimony from E.B., but when faced with difficulties, the State sought an adjournment. On the adjourned date, the State presented the videotape. After the videotape was admitted, the State did not call E.B. as a witness. Therefore, under a literal reading of § 908.08(5)(b), it would appear E.B. need not have been present at the preliminary hearing and his availability would have been presumed.

¶14 Next, we address Spaulding's argument that the State was required to qualify E.B. under WIS. STAT. §§ 906.03(1) and 908.08(3)(c) before he could testify on the videotape. We note that § 906.03(1) is part of the evidence code addressing the general requirements needed to be met before a witness testifies, while § 908.08(3)(c) is a more specific statute discussing the test for admission of a child's videotaped statement. Section 906.03(1) mandates an oath or affirmation must be given, while § 908.08(3)(c) sets forth an alternative procedure to administering an oath or affirmation. Thus, the statutes conflict. When there is a conflict between statutes, the specific statute controls over the general statute. ***State v. Smith***, 106 Wis. 2d 151, 159, 316 N.W.2d 124 (Ct. App. 1982). Consequently, we look only to the requirements set forth in WIS. STAT. § 908.08(3)(c) to see if they were met. After viewing the videotape and the pertinent case law, this court is satisfied that the § 908.08(3)(c) requirements were satisfied.

¶15 We agree with Spaulding that before a party can use a videotaped statement of a child under WIS. STAT. § 908.08, the tape must satisfy the standard found in § 908.08(3)(c). The statute permits the admissibility of a child's videotape only when there is a showing that the child either: (1) swore or affirmed to tell the truth, or (2) if the child's development level prevents the administration of an oath or affirmation, understood that false statements are punishable and telling the truth is important. Here, the videotape contains ample evidence that E.B. knew of the importance of telling the truth and was aware of the serious consequences of telling a lie.

¶16 The videotape reveals that upon questioning, E.B. confirmed that he knew the difference between telling the truth and lying, and that he believed liars would be punished. Although no specific questions were directed at E.B. with regard to his understanding of these concepts until late in the interview, E.B. affirmatively stated that he knew the importance of telling the truth. He also gave vivid examples of the consequences that befall people who lie. This testimony illustrated that he believed "false statements are punishable." Additionally, E.B.'s earnestness in correcting the social worker when, as a result of his speech impediment, she failed to correctly repeat what E.B. had just said, supports the conclusion that E.B. was telling the truth. A child engaged in lying would have little incentive to correct the interviewer, nor would such a child express irritation, as occurred here, when the social worker failed to understand his account of what happened to him. Although the tape shows that E.B. had many problems, he was, nevertheless, quite believable.

¶17 Finally, additional confirmation of E.B.'s knowledge that he was telling the truth came at the end of the videotape. On the tape, the social worker confirmed with E.B. that his father had told him, upon bringing him to the hospital, that he was to tell the truth. E.B. asserted that he had told the truth. For the reasons stated, we have independently determined that the prerequisites for admission of the videotape under WIS. STAT. § 908.08(3) were established and the motion seeking dismissal of the charges was rightfully denied.[3]

B. *The trial court properly denied Spaulding's request for an in camera inspection.*

¶18 Spaulding sought to have the trial court examine all of E.B.'s treatment records. The request covered all records generated by E.B.'s health care providers, his treatment records for his learning disabilities and his emotional problems, and the Children's Court file concerning E.B.'s placement in a foster home that occurred after these charges were filed. Spaulding contends that these records needed to be examined because there was a concern as to whether E.B. appreciated the difference between lying and telling the truth. The State opposed this request, arguing that Spaulding had not made a sufficient showing that the records would contain information material to E.B.'s credibility. The trial court denied the motion, observing that a great number of children suffer from attention deficit disorder and are medicated such as E.B., and that Spaulding had not shown that these children are inclined to lie or that the prescribed medications interfered with the child's understanding of the importance of telling the truth. While Spaulding submitted information showing that E.B. was also learning disabled and emotionally disabled, no information was presented suggesting that E.B.'s problems affected his ability to understand the importance of telling the truth or the negative consequences of lying.

¶19 Spaulding's motion centered on the difficulty encountered by E.B. when attempting to answer the commissioner's questions. However, the trial court stated, after reviewing the preliminary hearing transcript, that she believed it was the questions that led to E.B.'s confusion, not E.B.'s understanding of the concepts. Thus, the trial court found that not only had the requisite showing not been met permitting her to inspect E.B.'s records, but also that E.B.'s right of privacy prevented such a review.

¶20 A defendant in a criminal trial is entitled to an *in camera* inspection when there is a preliminary showing that "'the sought-after evidence is material to his or her defense.'" ***State v. Munoz***, 200 Wis. 2d 391, 395, 546 N.W.2d 570 (Ct. App. 1996) (citation omitted). ***Munoz*** also cautions that a defendant must establish more than "'the mere possibility'" that psychiatric records "'may be helpful'" in order to justify disclosure for an *in camera* inspection. ***Id.*** at 397. We review the findings of fact made by the trial court in its determination under the clearly erroneous standard. ***Id.*** at 395. "Whether a defendant has made the required preliminary showing presents a question of law." ***Id.*** We are satisfied that the trial court properly exercised its discretion in refusing to conduct an *in camera* inspection of the records.

¶21 Here, the motion seeking the *in camera* inspection was grounded on events that occurred when the State attempted to have E.B. testify at the preliminary hearing. The preliminary hearing commissioner asked E.B. a series of questions to test E.B.'s conceptions about truth and falsehood. Unfortunately, many of the commissioner's questions concerned numbers and colors. E.B.'s cognitive difficulties with colors and numbers made these examples difficult for him to understand. The commissioner also asked some very confusing questions:

THE COURT:

Q. Here take this. What is that?

A. A watch.

Q. Okay. It's my watch, right?

A. Um-hmm.

Q. Put it – hide it behind your back.

A. Okay.

Q. Now, … – is that your name, …?

A. (Nods head affirmatively)

Q. Do you have my watch?

A. (Nods head affirmatively)

Q. What did you just tell me?

A. Yes.

Q. Yes. Okay. Now –

….

Q. …. Now, let me ask you the question again and this time I want you to tell me, no, you don't have my watch, okay, even though you got it. I want you to say no. … do you have my watch?

A. No.

Q. All right. Now, was that a nice thing to say?

A. (Nods head affirmatively)

Q. Was it the right thing to say?

A. Yeah.

Q. Or was it the wrong thing to say?

A. Right.

Q. Why is it right if you have my watch to tell me you don't have my watch?

A. I don't.

Q. You don't?

A. (Shakes head negatively)

Q. You've got my watch, though, I can feel it back there. Why would you tell me that you don't have my watch when you've got it? Is that right or is that wrong to tell me that?

A. Right – wrong.

Q. Well, you got to pick one, either right or wrong.

A. Wrong.

Q. Why is it wrong?

A. (Shrugs shoulders)

Q. If you told me that you had my watch or that – I'm sorry, if you told me that you didn't have my watch when you really had my watch, would you be punished or rewarded?

A. Rewarded.

Q. Rewarded, and why is that?

A. (Shrugs shoulders)

The excerpts cited above reflect that the problems experienced at the preliminary hearing were partially attributable to the questioner. Further, unlike the situation in ***State v. Walther***, 2001 WI App 23, ¶¶4-8, 240 Wis. 2d 619, 623 N.W.2d 205, there was no evidence that E.B. had given false or inconsistent statements about the assault. Nor are the circumstances like those in ***State v. Shiffra***, 175 Wis. 2d 600, 610-12, 499 N.W.2d 719 (Ct. App. 1993), where the defendant established that the victim had a psychological disorder which, at times, prevented her from distinguishing between real and fantasy sexual matters. Thus, Spaulding made no showing that E.B.'s records would reveal evidence compromising his testimony.

¶22 Finally, E.B.'s counseling records also did not merit an *in camera* review. Counseling alone cannot serve as the basis for an *in camera* inspection of a victim's records. *See* ***Munoz***, 200 Wis. 2d at 399. Spaulding was required to provide "any allegation which, if believed, would tend to prove that [the child] has a psychological disorder that would make [him] a poor reporter of events relating to sexual conduct or draw [his]

credibility into question in any way." ***Jessica J.L. v. State***, 223 Wis. 2d 622, 635, 589 N.W.2d 660 (Ct. App. 1998). Spaulding has failed to provide such information. Therefore, the trial court properly exercised its discretion in denying Spaulding's motion.

C. *The trial court properly denied the request for an independent mental health examination of the victim.*

¶23 Spaulding next argues that the trial court erred in denying her request for an independent mental health examination of E.B. The issue arose in response to the State's motion *in limine* seeking to call the social worker who interviewed E.B. as an expert. In its motion, the State advised the court that the social worker would testify that E.B.'s conduct was consistent with the behavior of child victims of sexual assault. The trial court warned the State that if it granted the State's motion, then it would be granting Spaulding's motion seeking a psychological examination of E.B. As a result, the State withdrew its request. Spaulding argues that it is unfair to permit the State to obtain this type of information and to prohibit her from doing the same.

¶24 The standard of review in resolving a dispute concerning a request for an independent examination of a victim in a criminal case can be found in ***State v. Maday***, 179 Wis. 2d 346, 353, 507 N.W.2d 365 (Ct. App. 1993):

> Whether [the defendant] is entitled to a psychological examination of the victims presents us with varying standards of review. Normally, discovery matters are procedure-oriented determinations, central to keeping the trial process moving, and we pay a great deal of deference to the trial court in its role as overseer of the trial. However, in this appeal, we are also concerned with constitutional principles and protections. We cannot reject the trial court's findings of historical or evidentiary fact unless they are contrary to the great weight and clear preponderance of the evidence. Questions of law, we review *de novo*. Likewise, in order to insure consistency in the scope of constitutional protections, we independently review the trial court's findings of constitutional fact and independently apply the constitutional principles involved to the facts as found by the trial court.

Id. (citations omitted).

¶25 Maday attempted to obtain a psychological evaluation of the victim to counter the State's witness who had examined her. This court concluded that when the State has an expert who has personally examined the victim and that witness is going to testify that the victim's behavior is consistent with the behaviors of other sexual assault victims, then the defendant is entitled to have an independent examination of the victim. However, before such an examination is ordered, the court should be assured that there is a "'strong and compelling'" reason for it. ***State v. Schaller***, 199 Wis. 2d 23, 30, 544 N.W.2d 247 (Ct. App. 1995) (citations omitted).

¶26 Here, the State never proffered the expert testimony of the social worker who interviewed E.B. Thus, there was no basis for an independent examination. Spaulding argues that she should have had access to an expert because the State had an expert. She submits that because the State had access to an expert witness, she was disadvantaged. Further, she contends that a medical examination by her expert was needed because of the problems encountered with E.B.'s testimony at the preliminary hearing. She believes serious questions were raised at the preliminary hearing about E.B.'s ability to know the difference between truth and falsehood. We disagree.

¶27 First, the facts here are unlike those in ***Maday***. There, the State intended to call an expert witness to testify that the victim's behavior was consistent with the behavior of a sexual assault victim. ***Maday***, 179 Wis. 2d at 350. Here, Spaulding had a different reason for wanting an expert she selected. She wanted an expert to evaluate E.B.'s ability to understand the difference between truth and falsehood. However, no expert was needed to assess E.B.'s ability to understand these concepts. It was for the jury to determine whether E.B.'s account of the events was truthful. Thus, the due process implications involved in ***Maday*** and its progeny are not present here.

¶28 Second, since the State did not call anyone who interviewed E.B. as an expert, Spaulding was not disadvantaged. Nor has she shown a "strong and compelling reason" for such an examination. Moreover, had Spaulding desired, she could have had an expert testify about E.B.'s behavior by watching the videotape. No actual examination of E.B. was needed. Thus, the trial court properly denied Spaulding's request.

D. *Spaulding's sentence was neither unduly harsh nor unconscionable.*

¶29 Spaulding argues, alternatively, that if this court does not order a new trial, she is entitled to be resentenced because the trial court's sentence was unduly harsh and unconscionable.[4]

¶30 Spaulding looks to ***State v. Setagord***, 211 Wis. 2d 397, 416, 565 N.W.2d 506 (1997), which requires that any sentence imposed should "represent the minimum amount of custody consistent with [the sentencing] factors." She contends that, after applying the sentencing factors to her situation, it is apparent that her sentence is too severe, as the sentence given exceeds the "minimum amount of custody" required. She points out that she had no previous criminal record, that she had been engaged in helping others all her life and, although maintaining her innocence, she notes that she was convicted of "a one time occurrence."

¶31 We review a trial court's sentencing determination for an erroneous exercise of discretion. ***State v. Spears***, 227 Wis. 2d 495, 506, 596 N.W.2d 375 (1999). There is a strong public policy against interference with the sentencing discretion of the trial court, and sentences are afforded the presumption that the trial court acted reasonably. ***Id.*** The sentencing court is obligated to consider three primary factors: "(1) the gravity and nature of the offense, including the effect on the victim, (2) the character and rehabilitative needs of the offender, and (3) the need to protect the public." ***Id.*** at 507. Weight to be given to each of the primary sentencing factors is particularly within the wide discretion of the trial court. ***State v. Curbello-Rodriguez***, 119 Wis. 2d 414, 434, 351 N.W.2d 758 (Ct. App. 1984). A sentence will be deemed harsh and excessive only when the sentence is so excessive, unusual, and disproportionate to the offense committed so as to shock public sentiment. ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶32 In sentencing Spaulding, the trial court touched on all three primary factors. With respect to the gravity of the crime the trial court remarked that "what you did to this little boy was about as bad as it gets." The trial court noted that the assaults led to E.B.'s fear that he would be killed, that he experienced terrifying nightmares, and that he needs psychological counseling. The trial court also stated it was appalled at the way Spaulding took advantage of her position as a pastor's spouse. The trial court commented that Spaulding betrayed the trust most people place in members of the clergy and their spouses. The trial court also discussed Spaulding's character and found that she has done some good things in her life, but noted that Spaulding "knew better" and that she was clearly in need of treatment. Finally, the trial court remarked that the community needed to be protected from her so that other young people were not victims of this type of crime.

¶33 Spaulding's thirty-year sentence is ten years less than the maximum for first-degree sexual assault. Further, the crime she was convicted of involved a very vulnerable young boy who was already disadvantaged by his dysfunctional family and by his attention deficit disorder and mild retardation. Spaulding's actions also destroyed the trust and love that E.B. had had for Spaulding. Finally, Spaulding's contention that this "was the result of an isolated incident" is untrue. Although Spaulding was charged with only one count, the evidence revealed that Spaulding had engaged in this type of contact over the course of several months. Uncharged offenses are properly before the court as a factor to consider at sentencing. *See* ***State v. Fisher***, 211 Wis. 2d 665, 678, 565 N.W.2d 565 (Ct. App. 1997). Given all the relevant factors, we cannot conclude that the sentence was either unduly harsh or unconscionable. We are satisfied that the trial court did not erroneously exercise its discretion. Accordingly, we affirm the judgment of the trial court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

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[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[2] As we will discuss, some of the problems encountered were of the commissioner's own making. When questioning E.B., the commissioner posed various examples that contained colors and numbers to test E.B.'s veracity. E.B. has difficulties with colors and numbers because of his cognitive problems.

[3] Because of our decision, we need not reach the second ground proffered by the State for admission of the videotape; that is, that it fell within the residual hearsay exception pursuant to WIS. STAT. § 908.03(24).

[4] We note that the presentence investigation is not in the record. While the trial court has the obligation to make the presentence investigation part of the record on review, ***Chambers v. State***, 54 Wis. 2d 460, 465, 195 N.W.2d 477 (1972), an appellate court's review is confined to those parts of the record made available to it, ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). "[I]t is the burden of the appellant to demonstrate that the trial court erred…." ***Seltrecht v. Bremer***, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997); *see also* ***State Bank of Hartland v. Arndt***, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986) (burden on appellant to ensure that record is sufficient to address issues raised on appeal). Indeed, when the record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court's ruling. *See* ***Duhame v. Duhame***, 154 Wis. 2d 258, 269, 453 N.W.2d 149 (Ct. App. 1989). Because we must assume that the trial court's ruling is supported by the missing record, we conclude that the trial court did not erroneously exercise its discretion.