



PRACTICE POINTER

Make a Juvenile Bench Trial a “Real” Trial

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In the **Summer 2003** issue of the *Wisconsin Defender*, Assistant State Public Defender Leslee Ruscitti gave some excellent tips on how to defend a juvenile case during a bench trial. This Practice Pointer addresses a recent court of appeals decision which will give you legal authority to direct the fact finder’s attention to how to weigh the evidence properly and how to correctly apply the appropriate standard of proof.

The relevant case is *State v. Sarnowski*, 2005 WI App 48, pet. rev. pending. In this adult criminal court trial for failure to pay child support, the defendant testified that he had difficulty obtaining carpentry work during the applicable period of time. The judge, considering her own experience in trying to get carpenters during that time period, disbelieved his testimony.

The court of appeals recognized that jurors and judges may use their common knowledge and experience in reaching a verdict. However, a fact-finder’s particular experience regarding an evidentiary matter may not be used to convict. Such evidence can not be considered as “judicial notice” or as common knowledge and experience.

The court of appeals reiterated some important principles of which juvenile judges should be reminded occasionally. Verdicts must be based on evidence introduced at trial or on proper matters subject to judicial notice. A judge may not consider a matter known to him or her as an individual as an “adjudicative fact”. A fact-finder may not supply missing evidence by assuming knowledge on the particular subject. A judge may not disregard testimony or weigh the testimony through the filter of his or her own experience.

This *Sarnowski* case should encourage you to have the judge consider the jury instructions in making its ruling. It should encourage you to make a closing argument. The court will then be encouraged to give a reasoned decision explaining its verdict and the facts relied upon to reach its conclusion. Take heart; there have been many findings of guilt overturned on appeal where the evidence has been insufficient. Making the court explain its findings and the legal principles it applied makes it easier to obtain a reversal, particularly where improper matters are considered. Moreover, a reasonable fact-finder may find your client not guilty if the prosecution has not done an adequate job. ■