

**WISCONSIN SUPREME COURT**  
**THURSDAY, JANUARY 12, 2012**  
**9:45 a.m.**

*This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a Walworth County Circuit Court decision, Judge James L. Carlson, presiding.*

2010AP784

[State v. Tyler T.](#)

This case examines the fairly narrow issue of whether it is improper for an assistant district attorney to appear at a waiver recommendation meeting when neither the juvenile nor his attorney was asked to attend.

Some background: At age 15, a delinquency petition charged Tyler T. as a party to an armed robbery of a gas station, contrary to Wis. Stat. §§ 939.05 and 943.32(2). The state requested the juvenile court waive Tyler into adult court because armed robbery is a felony involving aggression and premeditation. Members of the Walworth County Department of Health and Human Services (WDHHS) held a staff meeting to decide whether to recommend that Tyler be tried as an adult. See Wis. Stat. § 938.18(2m). The assistant district attorney was invited to the meeting but Tyler and his defense counsel were not.

Although the assistant district attorney recommended at the meeting that Tyler be tried as an adult, the WDHHS made no recommendation in its report because the staff members could not reach a consensus. The circuit court ordered Tyler waived into adult court. However, the circuit court noted that it judged this on its “own feelings” and not based on any recommendation.

The Court of Appeals affirmed, rejecting Tyler’s assertion that a waiver investigation report should be treated the same as a pre-sentence investigation (PSI) report. The Court of Appeals explained:

A waiver investigation report is distinct from a PSI report. A petition to waive a juvenile into adult court can be filed by the prosecution, the juvenile, or the court. See Wis. Stat. § 938.18(2). A PSI is ordered exclusively by the court. See § 972.15(1). In this case, the assistant district attorney filed the waiver petition. While § 938.18 does not address whether a prosecutor may be present at a waiver recommendation report meeting, there is nothing in the Wisconsin statutes or case law that precludes a prosecutor from appearing. Indeed, it is entirely appropriate for the prosecution to appear at this meeting given that the assistant district attorney was the one who requested that Tyler be tried as an adult.

The state says Tyler has not addressed any constitutional issue and there is no rule forbidding the waiver investigation report writer from communicating with either the district attorney or the juvenile's attorney. It says communication with the district attorney regarding waiver is compatible with the fluid roles both agencies share in the juvenile justice system.

Tyler argues that a waiver investigation report is comparable to a presentence investigation report (PSI), as both are to be prepared by a neutral author to provide information to the court. See Wis. Stat. § 938.18(2m); § 972.15. Tyler points out that case law emphasizes the critical importance of neutrality in preparing the PSI. See State v. Knapp, 111 Wis. 2d 380, 386, 330 N.W.2d 242 (Ct. App. 1983); see also State v. Howland, 2003 WI App 104, ¶¶32, 33, 264 Wis. 2d 279, 663 N.W.2d 340.

Tyler says the factual distinctions between previous cases and his situation does not address the problem whether the prosecutor's advocacy at the departmental meeting could consciously or subconsciously influence the author of the waiver investigation report. He claims in his case, the report's neutrality was compromised.