

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MAY 14, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0232

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF
RODNEY K. S.,
A PERSON UNDER
THE AGE OF 18:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

RODNEY K. S.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Barron County:
JAMES C. EATON, Judge. *Affirmed.*

CANE, P.J. Seventeen-year-old Rodney K.S., born January 2, 1979, appeals an order waiving juvenile court jurisdiction on a burglary charge. Rodney argues that the juvenile court failed to reasonably exercise its discretion by failing to consider all the factors required in § 48.18, STATS. Because this court is satisfied that the juvenile court considered the relevant criteria for waiving juvenile court jurisdiction, the order is affirmed.

The following facts about the alleged offense are taken from the delinquency petition and the written statements of the three juveniles which were attached to the delinquency petition. On October 13, 1995, Rodney and two other juvenile males committed a sophisticated residence burglary for the purpose of stealing a number of high-tech firearms. Rodney and another youth, Cory, wore ski masks and gloves and brought along a change of shoes. The third youth, Jeremy, drove Rodney's car, with Rodney and Cory hiding in the backseat. As one of the youths described the burglary, they "dressed up for the crime."

After Jeremy knocked on the door and determined no one was home, Rodney and Cory broke a window with a crowbar they had brought with them. Upon entering the home, they broke into a locked gun cabinet and stole a "Street Sweeper" 12-gauge shotgun with an 18-1/2 inch barrel and a 12-round drum magazine, a TEC-9 semi-automatic 9mm weapon with a 32-round magazine, a Winchester 12-gauge shotgun with a marine pistol grip and 18-inch stainless steel barrel, a Mossberg 12-gauge "Persuader" shotgun with an 18-inch barrel, a .44 caliber Colt Anaconda pistol and a black powder weapon. The following day, Rodney told Cory that the guns were in safe hands and were being sold. Later, Rodney gave Cory \$200; \$100 for Cory and \$100 for Jeremy.

Whether to waive juvenile jurisdiction lies within the sound discretion of a juvenile court, which must keep in mind the best interests of the child as a paramount consideration. *In re C.W.*, 142 Wis.2d 763, 766-67, 419 N.W.2d 327, 328-29 (Ct. App. 1987). An appellate court will not reverse a juvenile court's discretionary act if the record reflects that the discretion was in fact exercised and there was a reasonable basis for the court's determination. *Id.* at 766, 419 N.W.2d at 328. A statement of the relevant facts and the reasons motivating the juvenile court's granting or denying juvenile waiver must be carefully delineated in the record. *Id.* at 767, 419 N.W.2d at 329.

When an appellate court reviews a trial court's exercise of discretion, it looks for reasons to sustain the decision. *In re J.A.L.*, 162 Wis.2d 940, 960-61, 471 N.W.2d 493, 501 (1991). Furthermore, although the juvenile court is directed to give its primary or foremost weight to the child's interests, it has discretion in weighing all the factors under § 48.18(5), STATS., and in waiving a juvenile into adult court where it is either in the juvenile's or the

public's best interest under § 48.18(6), STATS. *In re B.B.*, 166 Wis.2d 202, 209, 479 N.W.2d 205, 207 (Ct. App. 1991).

Any juvenile waiver decision must be based on the criteria listed in § 48.18(5), STATS., which reads as follows:

**Jurisdiction for criminal proceedings for children 14 or older;
waiver hearing**

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- (5) If prosecutive merit is found, the judge, after taking relevant testimony which the district attorney shall present and considering other relevant evidence, shall base its decision whether to waive jurisdiction on the following criteria:
- (a) The personality and prior record of the child, including whether the child is mentally ill or developmentally disabled, whether the court has previously waived its jurisdiction over the child, whether the child 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 child's motives and attitudes, the child's physical and mental maturity, the child'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 wilful manner, and its prosecutive merit.
 - (c) The adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile justice system, and, where applicable, the mental health system.
 - (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 circuit court.

Where the evidence is properly before the juvenile court with respect to these criteria, the juvenile court is required under § 48.18(6), STATS., to consider each of the criteria and set forth in the record specific findings with respect to the criteria. *C.W.*, 142 Wis.2d at 769, 419 N.W.2d at 330. The juvenile

court, however, has discretion as to the weight it affords each of the statutory criteria. *J.A.L.*, 162 Wis.2d at 960, 471 N.W.2d at 501. Section 48.18, STATS., does not require a finding against the child on every criterion before waiver is warranted. *B.B.*, 166 Wis.2d at 209-10, 479 N.W.2d at 207-08.

After reviewing the record of the juvenile waiver hearing, this court is satisfied that the juvenile court made sufficiently specific findings with respect to the relevant criteria. The juvenile court heard testimony from the juvenile intake worker who supported the waiver petition. The intake worker described Rodney's minimal previous record and stable home situation. However, based on the sophisticated method employed to commit this serious crime and the nature of the items taken and sold, the intake worker recommended waiver into adult court as opposed to placement at Lincoln Hills School.

Additionally, Rodney's father testified about his son's background and the appropriate measures he and his wife imposed on Rodney. Some of these measures included selling his son's car, grounding him to the home and restricting his telephone privileges. The father also testified about Rodney's above average school record, his employment history and his generally respectful attitude. It is obvious from the testimony and the delinquency petition and its attachments that the juvenile court had before it evidence about each of the criteria in § 48.18(5), STATS., and considered this evidence. However, as stated previously, the weight to be given these criteria is for the juvenile court when making its decision whether to waive juvenile jurisdiction.

The juvenile court in announcing its decision noted that this crime was not a "garden variety property crime." The juvenile court observed that the house burglary was more of a psychological rape in that the youths did not care about the owner's sanctity of his home. Also, the juvenile court noted that "Street sweeper shotguns, which have no place in any legitimate gun collection, Tech nines which are simply knock offs or rip offs of oozies, or similar automatic weapons are stolen for a reason; they are desirable, they are attractive, and it's clear that they were stolen to resell." Because these guns were stolen for the purpose of selling them for profit, the juvenile court expressed its concern that these dangerous guns were now in the streets where someone could be seriously injured or killed.

The juvenile court also observed that although Rodney had no serious prior record, the affiliation with the other youths and the nature of the criminal enterprise was a significant factor. Finally, the juvenile court concluded that it was not confident the juvenile court could deal appropriately with Rodney and that the best interests of the public would be served by waiving juvenile jurisdiction.

The juvenile court obviously believed that these aggravating factors outweighed any of the factors that weighed in favor of retaining juvenile court jurisdiction. This court is satisfied that the juvenile court properly considered and weighed each of the presented relevant criteria and reasonably exercised its discretion to waive juvenile jurisdiction. The juvenile court made its decision in a thoughtful and reasoned manner after considering and rejecting Rodney's contentions for retaining juvenile jurisdiction.

By the Court. – Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.