

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 28, 2005

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. 2004AP3381-CR

Cir. Ct. No. 2003CF24

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DUSTIN W. HARWICK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jackson County:
GERALD W. LAABS, Judge. *Affirmed.*

Before Deininger, P.J., Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Dustin Harwick appeals a judgment convicting him of first-degree intentional homicide. Harwick, who was fourteen at the time of the offense, argues that the jurisdiction of this case should have been transferred to juvenile court. We reject his argument. We therefore affirm.

¶2 The circuit court has adult criminal jurisdiction over a juvenile who is alleged to have committed first-degree intentional homicide after the juvenile's tenth birthday but before the juvenile's fifteenth birthday. WIS. STAT. § 938.183(1)(am) (2003-04).¹ The circuit court "shall retain jurisdiction unless the juvenile proves by a preponderance of the evidence": (1) that the criminal justice system cannot provide adequate treatment for the juvenile if he or she is convicted; (2) that transferring jurisdiction to the juvenile court would not depreciate the seriousness of the offense; and (3) "[t]hat retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the juvenile is accused" WIS. STAT. § 970.032(2). We will not overturn the circuit court's discretionary decision regarding transfer of jurisdiction to the juvenile court unless the circuit court misuses its discretion. See *State v. Verhagen*, 198 Wis. 2d 177, 191, 542 N.W.2d 189 (Ct. App. 1995).

¶3 In the instant case, we focus on the second criterion of the statute. The complaint makes the following allegations: The victim was found dead on the floor of her locked home. The victim's throat was slashed and there was a large wound on the right side of her head. The police found what appeared to be blood smeared on the exterior door of the victim's home. In a purse in bushes outside the home, the police found a serrated knife blade that was missing its handle and bloody pants. An autopsy revealed that the victim died as a result of injuries sustained from blunt force and sharp force trauma to her neck and head. Based on these allegations in the complaint, the circuit court did not misuse its discretion in concluding that transferring jurisdiction to the juvenile court would depreciate the

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

seriousness of the offense because the attack was very brutal and appeared to have been totally unprovoked. Harwick did not carry his burden of showing otherwise.

By the Court.—Judgment affirmed.

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

