

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOVEMBER 7, 1995

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, 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. 95-2100

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF
CLYDE P., A PERSON
UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

CLYDE P.,

Respondent-Appellant.

APPEAL from orders of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Affirmed.*

CANE, P.J. Seventeen-year-old Clyde P. (d.o.b. 1/30/78) appeals orders waiving juvenile court jurisdiction on charges of attempted robbery, battery, fleeing a police officer, burglary and theft.¹ Clyde argues that the trial court erred by making findings not supported by the evidence and by finding that the State had met its burden of proof. This court rejects his arguments and

¹ Petition for leave to appeal was granted August 8, 1995.

affirms the orders waiving juvenile court jurisdiction over Clyde on these charges.

Clyde stipulated to the prosecutive merit on each of these charges as alleged in the juvenile waiver petitions. Essentially, Clyde is charged with the beating and attempted theft of a wallet from a fifty-seven-year-old man. Three other younger juveniles were involved with Clyde in this incident that is alleged to have occurred on February 15, 1995. On March 24, 1995, a police officer observed Clyde driving a car. Learning that Clyde's license was suspended, the officer attempted to stop Clyde and became involved in a police car chase where Clyde's speed reached up to 100 miles per hour. Following the incident of fleeing the officer and operating a motor vehicle after his license had been suspended, Clyde was placed in secure detention and then released to his parents the following day.

Clyde remained at home until June 22, 1995, when he was taken into secure custody after being arrested for burglary and theft of a cash register from a campus building at the University of Wisconsin—River Falls. This incident occurred while Clyde had pending in juvenile court a waiver petition for the offenses of attempted robbery, aggravated battery and fleeing an officer.

Clyde argues that the trial court made three findings that are not supported by the evidence and therefore erred in its exercise of discretion to waive juvenile court jurisdiction. He contends the court erroneously found that there were no appropriate services available in the juvenile system; that the seriousness of the robbery and battery offenses was enhanced by the victim's vulnerability; and that Clyde had a "stable" home life.

After reviewing the record of the waiver proceedings, this court is satisfied the trial court did not predicate its decision to waive juvenile court jurisdictions on an erroneous factor. The court recognized that placements were available for Clyde at such places as Lincoln Hills or Apogee, but concluded such placements were inappropriate in light of Clyde's age, the seriousness of these charges and his prior juvenile misconduct. This conclusion is supported by testimony of Clyde's caseworker who was familiar with the available placements and Clyde's juvenile history.

The trial court also reviewed the circumstances of the beating and attempted robbery on the person whom the juveniles believed had a large sum of money in his wallet. Here, the trial court referred to the victim as known in the area to be a subject of potential harassment and recognized that the victim was vulnerable because of his appearance and age. Although Clyde's counsel called to the court's attention that there was no evidence to support this conclusion, the court responded by indicating that there were sufficient references in the juvenile waiver petition to the victim's lifestyle, to an incident where the juveniles had approached the victim asking for cigarettes and to the fact that the juveniles believed the victim had a lot of money from winning a lottery. The trial court could make such a reasonable inference of the victim's vulnerability from the information provided at the waiver hearing.

The trial court also reviewed Clyde's home life, and, although the term "stable" may not accurately describe Clyde's home life, the court was referring to the parenting skills of Clyde's mother. There is some evidence in the record to support this conclusion. However, the record demonstrates that the trial court was obviously aware of Clyde's dysfunctional home life and need for family counseling when it exercised its discretion to waive juvenile jurisdiction.

Finally, Clyde contends the trial court erred by finding that the State had met its burden of proof. In essence, he contends the evidence is insufficient to support the waiver of juvenile court jurisdiction. This court disagrees.

Clyde acknowledges that the decision to waive jurisdiction is committed to the sound discretion of the juvenile court. *In re D.H.*, 76 Wis.2d 286, 302-03, 251 N.W.2d 196, 205 (1977). The waiver decision must be based on the criteria listed in §§ 48.18(5)(a) through (d), STATS., and a statement of the relevant facts and the reasons motivating the court's granting or denying juvenile waiver must be carefully delineated in the record. *In re C.W.*, 142 Wis.2d 763, 768-69, 419 N.W.2d 327, 329-30 (Ct. App. 1987); § 48.18(6), STATS.

Here, the trial court recited §§ 48.18(5)(a) through (d), STATS., and made findings in favor of waiver with respect to each of the criterion. It placed significant emphasis on the fact that the attempted robbery was violent,

aggressive, premeditated and willful. The court noted that the extreme seriousness of this offense justified waiver, even if all other factors had suggested retention in the juvenile court. It also recognized Clyde was close to eighteen and a longer term of treatment was necessary. This court is satisfied that there was sufficient evidence before the trial court for it to reasonably exercise its discretion to waive juvenile court jurisdiction on these charges. The orders waiving juvenile court jurisdiction are therefore affirmed.

By the Court. – Orders affirmed.

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