

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 3, 2012

Diane M. Fremgen
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. 2011AP1890-CR

Cir. Ct. No. 2008CF1036

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KAWANIS N. TROTTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County:
WILBUR W. WARREN III, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

¶1 PER CURIAM. Kawanis Trotter appeals a judgment convicting him of felony murder and armed robbery, as party to a crime (PTAC). He

contends the trial court erroneously exercised its discretion in denying his reverse-waiver petition and in not ordering a juvenile disposition. We disagree and affirm.

¶2 During a late-night burglary of her home, Capri Walker was bludgeoned to death with a baseball bat as she slept. Trotter, then fourteen, and another juvenile, Roddee Daniel, were charged with PTAC first-degree intentional homicide by use of a dangerous weapon and armed burglary. Walker was Daniel's next-door neighbor. The police officers who took videotaped statements from Trotter and Daniel testified at the juveniles' joint preliminary hearing. According to the officers, Trotter and Daniel both admitted taking part in the burglary, but each claimed the other was the main actor and the one responsible for Walker's murder. The court bound both juveniles over for trial. Trotter and Daniel each filed reverse-waiver petitions; both were denied.

¶3 Trotter pled guilty to felony murder and to two counts of armed robbery, all as PTAC. Before sentencing, he unsuccessfully sought juvenile disposition on the basis that felony murder is not an offense for which there is original jurisdiction in adult court. The State opposed the motion on the basis that it violated the plea agreement. The court disagreed with the State, a determination the State does not challenge on appeal. Addressing the motion on its merits, the court denied Trotter a juvenile disposition and sentenced him to a total of forty-five years' imprisonment, bifurcated as thirty years' initial confinement and fifteen years' extended supervision. Trotter appeals.

¶4 Trotter first argues that the trial court erred in retaining jurisdiction because it considered only the overall seriousness of the offense. Daniel's

accusatory confession, Trotter submits, is inadmissible hearsay evidence,¹ and the only admissible proof of his, Trotter's, involvement—his own confession—plainly showed that his role and culpability were far less than Daniel's.

¶5 The trial court has exclusive original adult court jurisdiction in criminal proceedings involving a juvenile who is alleged to have attempted or committed first-degree intentional homicide. WIS. STAT. §§ 938.183(1)(am), 940.01 (2009-10).² Notwithstanding a finding of probable cause, the case may be transferred to juvenile court if the juvenile proves by a preponderance of the evidence that: (1) he or she could not receive adequate treatment in the criminal justice system; (2) transferring jurisdiction would not depreciate the seriousness of the offense; and (3) retaining jurisdiction is not necessary to deter that juvenile or others from committing the violation of which he or she is accused. *State v. Kleser*, 2010 WI 88, ¶¶67-68, 328 Wis. 2d 42, 786 N.W.2d 144; *see also* WIS. STAT. § 970.032(2). A trial court's decision to retain or transfer jurisdiction in a reverse-waiver situation is discretionary. *State v. Dominic E.W.*, 218 Wis. 2d 52, 56, 579 N.W.2d 282 (Ct. App. 1998) (citation omitted). We will uphold the ruling when the record shows that the court considered the facts of the case and reached a reasonable conclusion consistent with applicable law. *Id.*

¶6 Trotter challenges only the second of the three prongs. The record does not support his contention that the trial court relied on Daniel's inadmissible hearsay evidence when considering the seriousness of the crime. The central

¹ Trotter did not object below. Regardless, we will address his claim because both parties have briefed the argument, the record does not establish that the court relied on Daniel's confession, and Trotter's confession alone was enough to defeat his reverse-waiver motion.

² All references to the Wisconsin Statutes are to the 2009-10 version unless noted.

question here is whether Trotter's own admitted involvement was sufficiently egregious to allow the trial court to reasonably conclude that transferring the case would depreciate its seriousness. The planning that went into the incident persuaded the court, and persuades us, that it was.

¶7 According to Trotter's account, he and Daniel were driving around and Daniel said he wanted to rob his neighbor. They retrieved a baseball bat and a rifle from Daniel's house and went to Walker's house at 3:00 or 4:00 a.m. Daniel had the bat; Trotter had the rifle, allegedly unloaded. Daniel disconnected the outside telephone lines and then cut a screen on an open window, through which they climbed into the house. The pair rummaged through several rooms, taking several items, then went to the basement, where they discovered the sleeping Walker. Daniel suddenly clubbed her several times. He and Trotter then continued looking for other things to take. Daniel's version had Trotter wielding the bat, taking the more dominant role and attacking Walker.

¶8 We agree with the trial court that the crime could not be "written off to impulsivity [or] ... accident." We also are struck by the callousness of the duo resuming the robbery after Walker was murdered, regardless of who wielded the weapon. Based on Trotter's account alone, the court reasonably could conclude that transferring the case would depreciate its seriousness.

¶9 In any event, any error in admitting the unobjected-to hearsay would have been harmless. The trial court found that Trotter failed to establish by a preponderance of the evidence that he could not receive adequate treatment in the criminal justice system or that retaining jurisdiction was unnecessary to the goal of deterrence. Failure to prove any one of the statutory prongs thwarts a reverse

waiver no matter how compelling the evidence is on the others. *See Kleser*, 328 Wis. 2d 42, ¶97.

¶10 As noted, Trotter was charged with first-degree intentional homicide but was convicted of felony murder. Under WIS. STAT. § 938.183(1), the adult court has exclusive original jurisdiction over the former but not the latter. Trotter moved for a juvenile disposition pursuant to § 938.183(1m)(c). Trotter asserts that the trial court erred in denying his motion because it misinterpreted the fifth of five statutory factors listed in WIS. STAT. § 938.18(5). We disagree.

¶11 An adult court evaluating a request for juvenile disposition must determine, after considering the five WIS. STAT. § 938.18(5) criteria, whether the juvenile has proved by clear and convincing evidence that it would be in the best interests of him or her and of the public to impose a juvenile disposition. WIS. STAT. § 938.183(1m)(c)2. The first four criteria, stated generally, are the juvenile's personality, maturity, mental health and treatment history; his or her prior record; the type and seriousness of the offense; and the adequacy and suitability of services and programs the juvenile system offers for treatment of the juvenile and protection of the public. Sec. 938.18(5)(a)-(c). Trotter does not challenge the trial court's examination of the first four criteria. His complaint is that the trial court misconstrued the fifth, "[t]he 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 the court of criminal jurisdiction." Sec. 938.18(5)(d).

¶12 A trial court's decision to retain adult jurisdiction is discretionary and will not be disturbed by this court absent an erroneous exercise of discretion. *Cf. Dominic E.W.*, 218 Wis. 2d at 56 ("A decision to retain or transfer jurisdiction

in a reverse waiver situation is a discretionary decision for the trial court.”). We look for reasons to sustain the decision. *Id.*

¶13 The trial court noted that Daniel, who a jury found guilty of first-degree intentional homicide, received a life sentence. The court then observed that, because WIS. STAT. § 938.18(5)(d) speaks of the desirability of the court to be consistent, under the circumstances and given Daniel’s disposition and sentence, the fifth factor “would certainly militate against juvenile disposition.” Trotter contends this factor pertains only to advancing judicial efficiency but that the court misinterpreted it to require uniform sentences between co-actors regardless of their individual culpability. We disagree.

¶14 The question before the trial court was whether, after considering the five WIS. STAT. § 938.18(5) factors, Trotter should be adjudicated delinquent. The weight to afford each factor is within the court’s discretion. *See J.A.L. v. State*, 162 Wis. 2d 940, 960, 471 N.W.2d 493 (1991). To “militate against” a juvenile disposition does not suggest that the court thought it could not consider it. We understand the court’s comment to reflect a mental comparison of Trotter’s potential disposition to what Daniel actually realized for his part in the same criminal event. Trotter pled guilty, after all, to being a party to the crime of felony murder. Even if it misconstrued the factor to some degree, the court did not dwell on it or indicate that it was the linchpin of its determination.

¶15 Also, implicit in the court’s comment was a concern for the public’s interests. Protection of the public and treatment of the juvenile’s needs are “equally important purposes” of the Juvenile Justice Code. *See* WIS. STAT. § 938.01(2)(a), (f). The court already had commented that Trotter’s “disturbing” juvenile history—adjudications for a “relatively minor” battery involving a boy on

a bike, robbing a priest at gunpoint, robbery with force and armed robbery with force—preceded his current “very serious, violent, aggressive, clearly premeditated and willful” crimes that involved a death. The nature and violence of Trotter’s offenses clearly were escalating. Public confidence in judicial fairness likely would not be fostered by the same judge making wholly disproportionate dispositions for co-actors like Daniel and Trotter.

¶16 The record satisfies us that the trial court thoroughly considered and explained its rationale for each factor. We find no fault with its determination that Trotter failed to prove by clear and convincing evidence that a juvenile disposition was in his and the public’s best interest.

By the Court.—Judgment affirmed.

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

