

**COURT OF APPEALS
DECISION
DATED AND FILED**

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Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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No. 01-0363

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE INTEREST OF CHAZ M.,
A PERSON UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

CHAZ M.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Washington County:
PATRICK J. FARAGHER, Judge. *Affirmed.*

¶1 BROWN, P.J.¹ Chaz M. appeals the decision of the juvenile court waiving him to adult court. He argues that the trial court erroneously exercised its discretion in three ways: by considering a county social services report that he maintains was “rife with hearsay,” by failing to give sufficient weight to a doctor’s psychological opinion that waiver was not appropriate and by failing to give more weight to the fact that no one was injured in the armed robbery. We reject all three contentions and affirm.

¶2 The underlying facts resulting in Chaz’s arrest are undisputed for purposes of this appeal. He accompanied two adults from Milwaukee to the city of West Bend and acted as a lookout while the accomplices, who were masked and brandished handguns, robbed a credit union. The credit union staff was manhandled, terrorized and threatened. Afterward, a high-speed chase ensued, culminating in the get-away car being disabled and the perpetrators being caught. The State charged Chaz with being a party to an armed robbery by threat of force and brought a waiver petition. Following a hearing, the juvenile court waived him to adult court and Chaz appeals.

1. Claim of Unreliable Hearsay

¶3 Chaz’s initial argument is that the juvenile court should not have relied on the waiver report prepared by the county’s department of social services. He argues that the report was too full of hearsay to be reliable. In particular, he points to an unnamed source who claimed that Chaz’s mother made bad comments

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version.

about Chaz's lifestyle, in contrast to the mother's in-court statements to the contrary. He also points to uncomplimentary statements attributed to Chaz's "probation agents" in Milwaukee county, neither of whom appeared at the hearing. Chaz argues that one agent hardly knew him, having taken over the file two weeks prior to the end of the supervision term. Chaz contends that this agent was biased against him because of a vulgar voice mail message he left. As to the other agent, Chaz claims that she was biased against him as well because she did not have a positive relationship with him. Finally, he brings our attention to sentiments conveyed by a worker at an alternative school where Chaz had once been placed—a worker who used to date Chaz's sister despite Chaz's objections and who Chaz claimed was therefore biased against him. Chaz argues that none of these statements are demonstrably reliable. He claims that the first statement is unreliable because it was shown to be false, the second statement was untrustworthy because it was made by a biased person with a lack of knowledge, and the latter two statements are questionable because the declarants were biased.

¶4 Chaz does not say so, but it is evident that he knows hearsay evidence is admissible at a waiver hearing pursuant to WIS. STAT. § 938.299(4)(b), so long as the hearsay has "demonstrable circumstantial guarantees of trustworthiness." That is no doubt why Chaz couches his argument not on complaining about the admission of the hearsay evidence generally speaking, but rather on what he claims is unreliable and untrustworthy hearsay evidence.

¶5 So, the proper question before this court is not whether the juvenile court considered hearsay evidence, but whether that court relied upon untrustworthy hearsay. In considering this issue, we have looked at the record to determine if this issue was raised before the juvenile court. We find that it was, but in a very narrow context. Prior to the hearing, Chaz objected to the report on

the basis that it was dominated by untrustworthy hearsay. A colloquy then took place between Chaz's counsel and the juvenile court at which time the court indicated that if certain individual statements lacked sufficient guarantees of trustworthiness, an objection could be made at the hearing. At the hearing, the State asked the social worker who prepared the waiver report whether the persons she contacted revealed to her "any pertinent personality traits." Chaz timely objected to this question on hearsay grounds because it was not specific as to which declarants were making the comments about Chaz's personality traits. The juvenile court sustained the objection and directed the social worker to be specific about the conversations she had with the declarants which would reveal these traits. The social worker then discussed two people in particular. So, that is the only objection on hearsay grounds which was before the juvenile court. Thus, the question before us narrows down to this: Regarding Chaz's personality traits, is the history of personality traits supplied by these two people untrustworthy such that the juvenile court erroneously exercised its discretion by considering that testimony?

¶6 In answering this question, we looked at the total record. Following the juvenile court's ruling sustaining the objection, the social worker testified that she received a written report from one probation officer, a Ms. Carolyn Malone, and also spoke with her. Malone told the social worker that Chaz was uncooperative, defiant, oppositional and completely disruptive. Further, Malone told the social worker that Chaz did not follow through on any of the court-ordered recommendations when he was on supervision. The social worker also testified that she talked personally with the alternative school worker who stated that Chaz showed major disrespect, was totally defiant, had to be restrained and refused to comply with the staff.

¶7 The expert witness whom Chaz relied upon in trying to convince the court not to waive him was Dr. William Drankiewicz. The doctor gave his own account of Chaz's personality traits, as follows: He can be negativistic, resentful and cynical. He is likely to be defiant and oppositional and will engage in provocative behaviors. He may have difficulty with impulse control and will act without thinking about the consequences of his behavior. He can exhibit marked disregard for accepted social standards and will have difficulty with authority figures. He is not sensitive to the needs of others. He is not very tolerant of others' needs. He is aware of social rules, but his challenge is to either distance himself from the power structure or get around them. He has elevated scores with regard to social maladjustment, immaturity and alienations. In coming to these conclusions, Drankiewicz relied, in part, upon the social worker's report in general, and Malone's experiences in particular.

¶8 We conclude that what the juvenile court learned from the persons whom Chaz complained about was cumulative and supportive of the information supplied by the expert whom Chaz relied upon for his waiver defense. If Drankiewicz is trustworthy, as Chaz must believe, then so were the others who testified in similar fashion about Chaz's behavior pattern. The claim of "unreliability" is rejected.

¶9 To the extent that other information was used by the juvenile court which could arguably be considered hearsay, any objection made would have lacked merit. As the juvenile court pointed out, although it is true that one probation officer was on the job for only two weeks when he issued his report to the social worker, the information supplied was factual, not based on opinion. So, the juvenile court considered it to be trustworthy. We see no problem with that.

And while the mother may have testified differently than the statement contained in the social worker's report, credibility is for the juvenile court to determine.

2. Claim that Waiver was Inappropriate in Light of Dr. Drankiewicz's Placement Recommendation and in Light of the Fact that There was No Physical Harm to Any of the Victims.

¶10 Drankiewicz recommended that Chaz stay within the juvenile jurisdiction and that he be placed in the Serious Juvenile Offender Program (SJOP). He opined that, up until now, Chaz had not been held accountable for his behavior. Although he had been told that there would be consequences for misbehavior in the past, he really did not have to suffer them. The doctor felt that if Chaz were placed at Wales, the situation would be totally different. The doctor explained that he had talked to the people responsible for operating the SJOP and felt that the program would be appropriate for Chaz given his knowledge of Chaz's personality. Drankiewicz commented that Chaz would be closely monitored. The facts also showed that no injuries were inflicted on the victims.

¶11 Based upon Drankiewicz's opinion and the fact that the victims received no physical injuries, Chaz argues that waiver was not appropriate. Chaz complains that the juvenile court failed to give proper weight to the adequacy and suitability of the SJOP and put too much weight on the seriousness of the crime considering the fact that there were no injuries. In Chaz's view, a nonviolent crime ended up trumping all the other factors weighing against waiver.

¶12 In answer, we first observe the obvious—that the juvenile court is required to consider several criteria in deciding whether waiver is appropriate. These criteria are spelled out in WIS. STAT. § 938.18(5). The court must consider the juvenile's personality and prior record, the type and seriousness of the offense, the adequacy and suitability of the facilities, and the feasibility of handling the

case within the juvenile court rather than turning it over to another court for further proceedings. The statute does not require a finding against the juvenile on every criterion before waiver is granted. *B.B. v. State*, 166 Wis. 2d 202, 209, 479 N.W.2d 205 (Ct. App. 1991). It is within the juvenile court's discretion how much weight should be accorded each of the criterion. *Id.* at 209-10.

¶13 The juvenile court considered the woeful personality traits and prior record of Chaz. We have already mentioned that the same personality traits attributed to Chaz by the so-called hearsay declarants were also related by Drankiewicz. These traits paint a picture of a young man who relishes in defying authority, looks for ways to avoid doing the right thing and is antisocial. Moreover, it paints a picture of a young man who has had other chances in the juvenile system and has failed. The court noted that there was no mental illness involved, just a character disorder. The court considered that the disorder was consistent with criminal behavior. The juvenile court considered that this criterion favored waiver. That decision is sustained.

¶14 The juvenile court also considered the seriousness of the crime. The juvenile court acknowledged and considered the fact that no physical harm was done to the victims. But the court also considered the fact that the perpetrators were "quite a distance from their home turf"; they had masks with them and it was apparent that there was a plan and Chaz played a part in the plan. He was the driver and the three of them drove up and down West Bend looking for a place to hit. He served as a lookout man and was immediately paid for his services. The juvenile court also remarked that the offense is a crime against persons. It is accomplished by terrorizing and threatening the victims and thereby taking the money. Armed robbery often results in violence and the victims are very much at risk throughout the ordeal. And even though no physical harm resulted, physical

violence did take place. Moreover, we read the juvenile court's comments to say that an act of emotional violence took place as well. The legislature views armed robberies as major crimes, serious crimes—whether or not there is actual physical harm. The juvenile court properly gave sufficient credence to the seriousness of the crime and Chaz's involvement in that crime.

¶15 The juvenile court also considered the adequacy and suitability of the facilities available should the court retain jurisdiction. It considered Drankiewicz's opinion as the "major, major point of contention here." But the juvenile court characterized Drankiewicz's opinion as the product of an expert who was not sure the SJOP would work for Chaz. On balance, the doctor thought it would be worth the risk. The juvenile court did not believe it was worth the risk. As the juvenile court itself stated, it was not the doctor's choice to make; it was the court's. The court was not willing to take the chance on Chaz. The court gave its reasons. They were the seriousness of the offense, Chaz's attitude, his past noncompliance and his minimizing of the offense. The record supports the juvenile court's decision.

¶16 Finally, the court considered the convenience of doing everything in the juvenile court instead of waiving jurisdiction to the adult court and having that court get up to speed on the case. The court acknowledged the inconvenience of waiver, but said that all the other factors outweighed the convenience factor.

¶17 We note that discretion is exercised when the court makes a reasoned decision based upon the record. That is exactly what the juvenile court did here. We affirm the waiver.

By the Court.—Order affirmed.

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

