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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

MORGAN E. GEYSER,
Defendant-Appellant.

Appeal No. 2015-AP-1845-CR

Waukesha County Circuit Court
Case No. 2014-CF-596

ON APPEAL FROM A NONFINAL ORDER OF THE CIRCUIT COURT FOR WAUKESHA COUNTY, THE HONORABLE MICHAEL O. BOHREN PRESIDING

DEFENDANT-APPELLANT'S BRIEF

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STATEMENT OF THE ISSUE PRESENTED

1. Did the Defendant meet her burden of proof at the reverse waiver hearing to establish that jurisdiction should be transferred to juvenile court?

Circuit Court's answer: No.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Oral argument may be appropriate in this case under Wis. Stat. (Rule) 809.22. Appellant's arguments clearly are substantial and do not fall within that class of frivolous or near frivolous arguments concerning which oral argument may be denied under Rule 809.22(2)(a). At such time as counsel for appellant has had sufficient opportunity to review the brief of respondent, it may be that the briefs fully present and meet the issues on appeal, rendering oral argument technically unnecessary under Wis. Stat. (Rule) 809.22(2)(b).

Publication may be appropriate in this case, as the decision may clarify the proper considerations and analysis to be undertaken by a circuit court under this statute.

STATEMENT OF FACTS

On May 31, 2014, a passerby found P.L. on a sidewalk bleeding from multiple stab wounds. At the time, Morgan Geyser, her co-defendant Anissa Weier, and P.L., were best friends. After the stabbing incident, P.L. told police that she, Morgan, and Anissa were playing in a park when Morgan unexpectedly said, "I'm sorry" and began stabbing her repeatedly. P.L. also indicated that Morgan told her she had to do this to "save her life." (R. 62, p. 4-5). Morgan and Anissa were later found by police, walking along a highway in Waukesha County.

Both girls indicated that they were walking to the Nicolet National Forest (several hundred miles away) to meet Slenderman at his mansion. Morgan was barely twelve years old at the time, and this conduct was out of character for a girl otherwise known by those in her life as peaceful and shy. What no one knew was that Morgan suffered from undiagnosed schizophrenia, and the auditory and visual hallucinations she experienced on a regular basis had become her reality. Those hallucinations, a symptom of her untreated schizophrenia, caused Morgan to believe that she interacted with a number of fictional characters on a regular basis. One such character was Slenderman, a fictional, faceless man with long, sharp tendrils and frightening supernatural powers who preys upon children. Morgan was not alone in her delusions. Anissa also believed in Slenderman, claiming to have seen him on multiple occasions. Anissa's independent corroboration of Morgan's hallucinations only reinforced Morgan's belief in Slenderman, and both girls came to believe that they needed to kill P.L., or their families would die at the hands and tendrils of Slenderman.

Following Morgan's arrest, police searched her middle school locker. They found a notebook with drawings and writings paying homage to Slenderman. Police also found a "supply list" which would be needed to fend off various fictional individuals such as "Jeff the Killer" or Slenderman. (R. 62, p. 4). A private investigator searched Morgan's room, finding mutilated Barbie dolls, along with drawings and writings reflecting her belief in Slenderman. (R. 62, p. 8-9). Many of the mutilated Barbie dolls featured Slenderman signs and symbols

carved or drawn on their bodies. The investigator found a drawing made by Morgan which showed a girl with a knife in front of her with the phrase “Help me Escape My Mind” written above her head. Another picture was of the Slenderman character with the word “No” written dozens of times, covering all useable space of the picture. In that picture, the letter “o” in the word “No” had been replaced with the Slenderman symbol. Other drawings featured images of Slenderman or his symbol, with phrases such as “He is Here Always,” “Who Can Save You Now,” and “The Last Thing You See.”

Both girls were interviewed by police, and Anissa confirmed in her interview with Detective Trussoni that Morgan feared that Slenderman would “go after their families.” In her interview with Detective Casey, Morgan stated that Weier told her they had to do the killing or Slenderman would kill their families. Morgan also indicated that she sees Slenderman in her dreams, and sees him even when no one else can see him. She said she would start to get “Slender sickness” because of “Slender radiation,” and revealed that Slenderman watches her and can read her mind.

Morgan was evaluated by Dr. Deborah Collins, a forensic psychologist frequently relied upon by the State of Wisconsin for expert opinions in criminal cases. Dr. Collins has worked with the Wisconsin Forensic Unit for more than ten years, and is currently the director of that agency. Dr. Collins noted that Morgan has an “enduring and predominant belief in the existence of Slenderman.” She diagnosed Morgan with unspecified schizophrenia spectrum and other psychotic

disorder. Dr. Collins also noted Morgan's beliefs in other fictional characters, such as the Harry Potter character "Voldemort." She noted that, to Morgan, Voldemort is real, and she interacts with him even at the Washington County Detention Center. (R. 97, p. 4-9).

Officer Shelley Grunkee was working at the Washington County Juvenile Detention Center the night Morgan was booked. She asked Morgan why the stabbing happened, and Morgan replied, "it had to be done," and "the man got the order, it had to be done." Morgan also said that "the man comes to visit all the time," and has been visiting her since she was 3 years old. (R. 62, p. 8).

Morgan was further evaluated by Dr. Kenneth Robbins, a board-certified psychiatrist. Dr. Robbins was the medical director at the Mendota Mental Health Institute for roughly six years, and met with Morgan on a number of occasions. Dr. Robbins confirmed that Morgan is in the early stages of schizophrenia, suffers from both auditory and visual hallucinations, and possesses an unwavering belief that Slenderman and other fictional characters are real. (R. 97, p. 14-18).

Morgan has remained in custody since May of 2014 – over half of 2014 and nearly all of 2015. She is largely isolated, and lives in the only cell in her facility that does not have a skylight to allow her to see the sun. She is not allowed outdoors. She has received no treatment for her mental illness whatsoever since being taken into custody. She often sleeps on the floor and eats her meals underneath a table. Because this case is in "adult court" she is unable to benefit from all of the services that would be available to her in the juvenile system.

Notably, both Dr. Collins and Dr. Robbins have testified that Morgan cannot receive adequate treatment in the "adult" criminal justice system.

CASE HISTORY

Both defendants were charged with Attempted First-Degree Intentional Homicide as Party to a Crime, by Use of a Dangerous Weapon, by a criminal complaint filed on June 2, 2014. (R. 1). The circuit court found Ms. Geyser, the Defendant in the above-captioned matter, incompetent to proceed at a hearing held on August 1, 2014 (R. 33), and then found that she had regained competency at a hearing held on December 18, 2014. A preliminary hearing was held on February 16 and 17, 2015, and the circuit court found probable cause to proceed on March 13, 2015.

Evidentiary hearings on the issue of reverse waiver vis-à-vis the Defendant were held on June 17 and 18, 2015.[1] The Defendant presented testimony from Dr. Deborah Collins, director of the Wisconsin Forensic Unit. Dr. Collins substantiated the Defendant's significant mental-health issues, and testified that the Defendant's clinical needs supported transfer to Juvenile Court. Dr. Kenneth Robbins, former medical director at Mendota Mental Health Institute, testified regarding the Defendant's unwavering belief in fictional characters, the auditory and visual hallucinations from which she suffers, and the absence of the necessary treatment resources in the criminal justice system. The Defendant also presented

[1] Evidentiary hearings on the issue of reverse waiver vis-à-vis the codefendant were held on May 26 and 27, 2015.

testimony from staff at Copper Lake School for Girls, Waukesha County Department of Health and Social Services, Washington County Detention Center, and the Defendant's school.

The circuit court denied the Defendant's motion for reverse waiver to juvenile court by an oral ruling on August 10, 2015, and signed a written order indicating such on August 26, 2015, (R. 107). This Court granted the Defendant's Petition for Leave to Appeal that non-final order. (R. 117).

ARGUMENT

The circuit court erred when it held that the Defendant did not meet her burden to prove by a preponderance of the evidence that reverse waiver was appropriate. The uncontroverted evidence presented by the Defendant clearly establishes that the Defendant could not possibly receive appropriate treatment in the adult criminal justice system, that reverse waiver would not depreciate the seriousness of the offense committed by the Defendant, and that retaining jurisdiction is not necessary to deter the Defendant or any other juveniles from committing the offense. This Court should find that the Defendant met her burden, reverse the circuit court, and order that the Defendant be waived into the juvenile court system.

I. STANDARD OF REVIEW.

"A decision to retain or transfer jurisdiction in a reverse waiver situation is a discretionary decision for the trial court." *State v. Dominic E.W.*, 218 Wis. 2d 52, 56, 579 N.W.2d 282, 284 (Ct. App. 1998) (citing *State v. Verhagen*, 198 Wis. 2d

177, 191, 542 N.W.2d 189, 193 (Ct. App. 1995)). Such a decision should be affirmed on appeal only "if the circuit court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *State v. Kleser*, 2010 WI 88, ¶ 37, 328 Wis. 2d 42, 60, 786 N.W.2d 144, 152-53 (citing *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175, 184 (1982)).

II. THE CIRCUIT COURT MISAPPLIED THE THREE FACTORS TO THE EVIDENCE.

The circuit court did not reach a reasonable conclusion, having failed to use a demonstrated rational process to examine the relevant facts and apply a proper standard of law. "Juveniles whose cases are charged originally in courts of criminal jurisdiction have a statutory right to a reverse waiver hearing after the criminal court finds probable cause." *State v. Kleser*, 2010 WI 88, ¶ 19, 328 Wis. 2d 42, 53, 786 N.W.2d 144, 149. The juvenile bears the burden of proof to demonstrate that jurisdiction should be transferred from "adult court" to juvenile court. *State v. Verhagen*, 198 Wis. 2d 177, 190, 542 N.W.2d 189, 193 (Ct. App. 1995). The three elements that a juvenile must prove by a preponderance of the evidence are:

> (a) That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.
>
> (b) That transferring jurisdiction to [juvenile court] would not depreciate the seriousness of the offense.
>
> (c) That retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the [alleged offense].

Wis. Stat. § 970.032(2).

Separate evidentiary hearings were held for each of the two co-defendants in the present case regarding reverse waiver. Because of the separate testimony presented at each hearing, and because of the significant differences between the two defendants, it was inappropriate and problematic for the circuit court to choose to issue a combined oral decision for both defendants at a single hearing. Such a procedure creates a risk that the circuit court's examination of the relevant facts and rational decision-making process for each defendant will inappropriately overlap, leaving each defendant unable to determine on which record the circuit court made its findings. Exactly that occurred in the present case.

The circuit court began its oration, appropriately enough, with a summary of the applicable law (3-8, App. 36-41) and the alleged incident (8-10, App. 41-43). The circuit court then summarized the testimony from the hearings held for each defendant. (10-14, App. 43-47). But the circuit court's subsequent analysis "in applying the criteria to the background for each of the defendants" (14.24-25, App. 47), the very subject of this appeal, makes no distinction whatsoever between the two individuals.

A. The Defendant's Significant Mental Health Issues Would not be Treated, but Made Worse in the Criminal Justice System.

The first element of the analysis is "[t]hat, if convicted, the juvenile could not receive adequate treatment in the criminal justice system." § 970.032(2)(a). The Defendant met her burden of proof to establish this fact by a preponderance of

the evidence. The circuit court did not make an express holding regarding the adequacy of treatment in the "adult" criminal justice system, but its discussion of the Defendant's treatment needs and the opportunities for such treatment in the criminal justice system strongly suggests that such treatment would be wholly inadequate. The circuit court expressly acknowledged that "what happens at age 18" was "a critical factor for the court to evaluate in addressing treatment." (18.9-11, App. 51). But the circuit court also noted that experts testified that the Defendant's "situation was best addressed in the juvenile justice system as opposed to the adult system," and "that meaningful services for [the Defendant] would not be available in the adult system." (13.17-21, App. 46). This testimony was uncontroverted.

More specifically, the circuit court observed that "Dr. Kenneth Robbins testified that . . . [i]n the adult system she would be subject to victimization, would make her illness, schizophrenia, worse." (14.12-23, App. 47). The circuit court also noted that at Taycheedah, where each co-defendant would be housed in the adult system, "there was a wait list for programs" and fewer "resources were available to address programs due to the overcrowding," such that the circuit court "wasn't particularly impressed with what Taycheedah said they had available." (17.1-6, App. 50).

In *State v. Verhagen*, 198 Wis. 2d 177, 542 N.W.2d 189 (Ct. App. 1995). the circuit court "acknowledged that [the defendant]'s treatment in the adult system might not be as adequate as that in the juvenile system, but the court

concluded, on balance, that the other statutory factors in favor of retaining adult court jurisdiction overrode this consideration." *Id.* at 193, 542 N.W.2d at 194. This Court approved of the circuit court's "balanc[ing] the relevant legal criteria," *id.* at 194, and later cited *Verhagen* to support its conclusion that "[t]he reverse waiver statute permits the trial court to balance the treatment available in the juvenile system with the treatment available in the adult system and requires it to decide under the specific facts and circumstances of the case which treatment will better benefit the juvenile," *State v. Dominic E.W.*, 218 Wis. 2d 52, 56, 579 N.W.2d 282, 284 (Ct. App. 1998) (citing *Verhagen*, 198 Wis. 2d at 193-94, 542 N.W.2d at 194).

But the Wisconsin Supreme Court has since clarified that the proper application of Wis. Stat. § 970.032(2) does not include such balancing. In *Kleser*, the court noted that "the reverse waiver statute requires the juvenile to prove *each* of the three elements by preponderance of the evidence." 2010 WI 88, ¶ 97, 328 Wis. 2d at 84, 786 N.W.2d at 165 (emphasis in original). In other words, "If the juvenile fails to prove one of these elements, the court cannot grant the reverse waiver, no matter how compelling the other two elements may be." *Id.* By repudiating that language of *Verhagen*, the Wisconsin Supreme Court has left the above-quoted language in *Dominic E.W.* without any legal underpinning. As such, a proper analysis under the first element of § 970.032(2) considers the adequacy of "treatment in the criminal justice system" without requiring a comparison with treatment in the juvenile system.

The circuit court noted that the co-defendant "rejected the Slenderman delusion during one of the initial interviews," and that testimony at the co-defendant's hearing indicated that the Defendant "was a dominant personality, but both shared the delusional disorder. When the connection is broken, the less dominant person stops accepting the delusional system . . . ." (10.23-11.3, App. 43-44). In contrast, the Defendant "continues to have conversations and maintain contact with fictional characters that have been testified to at the hearings. We know that those characters, fictional individuals, do not exist, but she operates as if they do at the juvenile justice system." (13.9-13, App. 46). The circuit court also noted that the co-defendant "displays remorse and has maintained herself well in the detention." (11.7-9, App. 44). In contrast, the Defendant, who earlier in the proceedings had been found not competent to stand trial, "is withdrawn from reality and . . . makes choices against her own best interest." (13.15-17, App. 46). She has "significant mental health issues, schizophrenia. She suffers from psychotic spectrum disorder." (12.13-15, App. 45). At the Washington County Juvenile Detention Facility, the Defendant "continues to have conversations with Harry Potter characters, sits under a table, reads, eats her food under the table and has continued to emphasize she has Vulcan powers." (13.24-14.2, App. 46).

These differences are significant, particularly in light of the Defendant's having "rejected medication and . . . indicated she prefers to continue to live . . . within the fictional world that she has operated in and have contact with the fictional characters she's had contact with in the past." (13.3-7, App. 46). The

circuit court briefly acknowledged "testimony at the hearings involving the civil mental health system," but indicated that this system "has no impact" on its analysis. (19.9-12, App. 52). To the extent that the circuit court's concern about continued supervision is an appropriate consideration, the existence of statutory authority, Wis. Stat. § 51.20, allowing the civil commitment of an individual upon proof that the individual "is mentally ill and is a proper subject for treatment, and that the person is dangerous to himself or herself, or others," *In re Michael H.*, 2014 WI 127, ¶ 28, 357 Wis. 2d 272, 290, 856 N.W.2d 603, 612, is highly relevant to the question of what treatment would be available upon the termination of a juvenile court disposition, at least vis-à-vis this Defendant.

The circuit court did not distinguish between the two defendants when it made its oral decision. The circuit court failed to consider these significant differences between the treatment needs of each defendant. The circuit court's focus on the opportunity for continued *supervision* in the "adult" system after age 18 avoids the statutory question, i.e. the adequacy of the *treatment* in the criminal justice system. As hard as all actors in the criminal justice system wish otherwise, "confinement," "supervision," and "treatment" are not synonyms. If anything, the circuit court's focus on the opportunity for continued supervision supports a holding that the Defendant would *not* receive adequate treatment under the "adult" system.

B. Transferring Jurisdiction to Juvenile Court Does not Depreciate the Seriousness of the Offense for a Child Who Just Turned Twelve, Was

Motivated by a Fictional Internet Character, and Who Has Significant Mental Health Needs.

The second element of the analysis is "[t]hat transferring jurisdiction to [juvenile court] would not depreciate the seriousness of the offense." § 970.032(2)(b). The Defendant met her burden of proof to establish this fact by a preponderance of the evidence.

"If the reverse waiver statute required the criminal court to retain jurisdiction in all situations involving [an offense], the legislature would not have provided the juvenile the opportunity to prove that the juvenile would not receive adequate treatment, that transfer would not depreciate the seriousness of the offense and that retaining jurisdiction would not be necessary to deter the juvenile or other children from committing further" offenses. *State v. Dominic E.W.*, 218 Wis. 2d 52, 59, 579 N.W.2d 282, 285 (Ct. App. 1998). In *Dominic E.W.*, the defendant "was charged as an adult with battery to a correctional officer" after he "punched a staff member in the nose." *Id*. at 54-55, 579 N.W.2d at 283. The State appealed the circuit court's grant of reverse waiver, arguing, *inter alia*, "that this court will frustrate the purpose of the statute – to protect those who work in, visit or are confined in a secured correctional facility – by affirming the reverse waiver order." *Id*. at 59, 579 N.W.2d at 285.

The court rejected the State's interpretation of this requirement, finding that it "would render these considerations superfluous, a result to be avoided." *Id*. (citing *State v. Koopmans*, 210 Wis. 2d 671, 679, 563 N.W.2d 528, 532 (1997)).

That juveniles charged in "adult" court with attempted first-degree intentional homicide are statutorily eligible for reverse waiver means that there will be juveniles so charged for whom reverse waiver is appropriate. *See id*. at 60, 579 N.W.2d at 285. The Defendant in the present case is clearly such an individual, given the mental health issues discussed above.

In the present case, the circuit court held that "the transfer to the juvenile system for this type of an offense under these circumstances does unduly depreciate the seriousness of the offense . . . ." (25.20-23, App. 58). The court did note that it "easily finds this is a violent, premeditated, personal offense, doesn't involve any property damage whatsoever." (10.13-15, App. 43). The court later stated, "There has to be assurance that doesn't happen again, assurance to the public that that doesn't happen again, and assurance to the public and to these defendants as well that a serious offense is dealt with on a serious basis that offers protections to everyone . . . ." (25.4-9, App. 58).

The circuit court's reference to "this type of offense" is problematic. The specific offense for which the Defendant would be bound over was determined at the preliminary hearing, a fact that the circuit court acknowledged during its decision. (4.5-9, App. 37). After a contested preliminary hearing, the circuit court found probable cause to believe that the Defendant committed an attempted first-degree intentional homicide, undoubtedly a "serious offense." Of course, all attempted first-degree intentional homicides are "serious offenses." And yet all "[j]uveniles whose cases are charged originally in courts of criminal jurisdiction

have a statutory right to a reverse waiver hearing after the criminal court finds probable cause." *State v. Kleser*, 2010 WI 88, ¶ 19, 328 Wis. 2d 42, 53, 786 N.W.2d 144, 149. The court did not consider the unique nature of *this* offense – i.e. that Morgan's entry point to the criminal justice system was her psychotic condition. It was unrebutted that but for her mental health problems, the crime would not have occurred.

Furthermore, the circuit court failed to consider the Defendant's argument that the State's treatment of the Defendant while the present case has been pending mitigates any concerns about depreciating the seriousness of the offense. Unlike every other juvenile housed at the Washington County Juvenile Detention Facility, the Defendant has been housed in virtual isolation. She remains in a cell by herself without any sunlight. She cannot go outside and cannot breathe fresh air. This has persisted for approximately 18 months, while the case has been pending. And while most juveniles housed at the facility stay there a maximum of 30 days, the Defendant has been in custody there nearly 18 times longer than the average juvenile (with the exception of the time spent at Winnebago Mental Health Facility while she was restored to competency). The State's efforts to restore the Defendant to competency are the only form of treatment that the Defendant has received for the duration of the present case. The Defendant's confinement experience over the last 18 months is a unique punishment that mitigates any concerns about depreciating the seriousness of the offense.

C. The Rarity of the Defendant's Mental Health Issues for a Girl Her Age, Combined With the Delusionary Motive for the Offense, Makes Deterrence Impossible in Any Court.

The third element of the analysis is "[t]hat retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the [alleged offense]." § 970.032(2)(c). The circuit court held that, "on the issue of deterrence, to return to the juvenile system does not offer deterrence." (25.14-16, App. 58). The phrasing of the circuit court's conclusion that "the defendants have failed to meet their burden of deterrence," (25.17-18, App. 58), reveals the error in its reasoning. A juvenile is not required under Wis. Stat. § 970.032(2)(c) to affirmatively prove that transfer to juvenile court provides deterrence. The Defendant met her burden of proof to establish that retaining jurisdiction is not necessary for deterrence purposes by a preponderance of the evidence.

Deterrence simply is not possible in every situation. For example, both the United States Supreme Court and the Wisconsin Supreme Court have declined to apply the exclusionary rule in various circumstances where such application is unlikely to have a deterrent effect. In *United States v. Leon*, 468 U.S. 897 (1984), the United States Supreme Court found no basis "for believing that exclusion of evidence seized pursuant to a warrant will have a significant deterrent effect on the issuing judge or magistrate." *Id*. at 916. In *Illinois v. Krull*, 480 U.S. 340 (1987), the Court found no reason to believe that "exclusion of evidence seized pursuant to a statute subsequently declared unconstitutional will "have a significant deterrent effect" on legislators enacting such statutes." *Id*. at 352 (quoting *Leon*,

468 U.S. at 916). "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system." *Herring v. United States*, 555 U.S. 135, 144 (2009). "The pertinent analysis of deterrence and culpability is objective, not an 'inquiry into the subjective awareness of arresting officers.'" *Id*. at 145. The Wisconsin Supreme Court has reached similar conclusions. *See*, *e.g.*, *State v. Dearborn*, 2010 WI 84, 327 Wis. 2d 252, 786 N.W.2d 97.

Implicit in the circuit court's holding that "the juvenile system does not offer deterrence" in the present case is a conclusion that the "adult" system does. To the contrary, the circuit court's findings make clear that retaining jurisdiction in "adult" court is not necessary to deter either the Defendant or other juveniles, because neither "adult" court nor juvenile court can effectively deter an individual who believes that he or she must kill another human being in order to become a follower of Slenderman, or in order to prevent Slenderman from harming his or her family. Just as there are cases where application of the exclusionary rule will have no deterrent effect on police misconduct, the present case is one in which neither the "adult" criminal justice system nor the juvenile system will have any deterrent effect. No one who seriously contemplates killing another human being in order to become a follower of Slenderman takes into consideration the potential legal consequences of such an act. No juvenile who seriously contemplates killing his or her friend in order to become a follower of Slenderman takes into

consideration whether an "adult" court will choose to transfer jurisdiction to juvenile court when deciding whether to attempt to commit a first-degree intentional homicide.

The above is especially true of this Defendant in particular. Dr. Collins emphasized during her testimony that the Defendant's "entry point" into the criminal justice system is her mental health condition itself. But for the schizophrenia from which she suffers, there would be no offense, no arrest, no detention, and no criminal charge. Dr. Collins, who, as director of the Wisconsin Forensic Unit, is frequently relied upon by the State for competency determinations, testified about how rare it is for a 12-year-old girl to be diagnosed with schizophrenia. Again, the circuit court failed to conduct any analysis of this factor specific to the Defendant. Instead, the circuit court considered the two defendants together, making no distinctions whatsoever regarding the criminal justice system's ability to deter either each individual or any similarly-situated juveniles, however few there may be.

Even the remarks that the circuit court did make about the "adult" criminal justice system's ability to deter in the present case missed the mark. The circuit court stated, "There has to be assurance that doesn't happen again, assurance to the public that that doesn't happen again, and assurance to the public and to these defendants as well that a serious offense is dealt with on a serious basis that offers protections to everyone . . . ." (25.4-9, App. 58). But treatment and protection of

the public are not the same as deterrence. *See State v. Carpenter*, 197 Wis. 2d 252, 271, 541 N.W.2d 105, 112-13 (1995).

The proper analysis regarding this element focused on whether waiver into juvenile court will affect the legal system's ability to deter. But the circuit court instead focused its analysis on whether the juvenile court system can, in fact, deter. The circuit court erred when it presumed that retaining jurisdiction in "adult" court does, in fact, effectively deter.

CONCLUSION

The circuit court erred when it held that the Defendant did not meet her burden to prove by a preponderance of the evidence that reverse waiver was appropriate. The uncontroverted evidence presented by the Defendant clearly establishes that the Defendant could not possibly receive appropriate treatment in the adult criminal justice system, that reverse waiver would not depreciate the seriousness of the offense committed by the Defendant, and that retaining jurisdiction is not necessary to deter the Defendant or any other juveniles from committing the offense. This Court should find that the Defendant met her burden, reverse the circuit court, and order that the Defendant be waived into the juvenile court system.

Dated this 8th day of December, 2015.

Respectfully submitted,

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CERTIFICATION OF FORM, LENGTH, AND ELECTRONIC COPY

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 4,902 words.

I further certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19 (12), and that the text of the electronic copy of this brief is identical to the text of the paper copy.

Dated this 8th day of December, 2015.

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CERTIFICATION OF APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

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