STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2015AP1845-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MORGAN E. GEYSER,

Defendant-Appellant.

APPEAL FROM A NONFINAL ORDER RETAINING JURISDICTION PURSUANT IN ADULT COURT, ENTERED IN THE WAUKESHA COUNTY CIRCUIT COURT, THE HONORABLE MICHAEL O. BOHREN PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication.

STATEMENT OF THE CASE AND FACTS[1]

In June 2014, the State charged twelve-year-old Defendant-Appellant Morgan E. Geyser with attempted first-degree intentional homicide with the use of a dangerous weapon, as a party to the crime, contrary to Wis. Stat. § 940.01(1)(a) (1).[2] The complaint was based on the allegation that Geyser and co-defendant Anissa Weier had stabbed their friend, PL, nineteen times (1).

Pursuant to Wis. Stat. § 970.032(1), the circuit court held a preliminary hearing.[3] The court then issued an oral ruling, concluding that there was probable cause that Geyser had attempted to commit first-degree homicide (124:42-43).

In June 2015, the court held a two-day "reverse waiver" hearing, pursuant to Wis. Stat. § 970.032(2) (126; 127; 128). At the hearing, Geyser presented testimony from nine witnesses in favor of her claim that she should be transferred from the criminal justice system to the juvenile system (126; 127; 128). In addition to cross-examining most of Geyser's witnesses, the State presented testimony from one witness to rebut Geyser's claim that transfer was warranted (127:79-108). Before issuing

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[1] The State has supplied its own statement of the case and facts because most of Geyser's statement lacks citation to the record, in violation of Wis. Stat. § 809.19(1)(d).

[2] The adult criminal justice court has exclusive jurisdiction over a juvenile, aged ten years old or older, who is alleged to have attempted to violate Wis. Stat. § 940.01. Wis. Stat. § 983.183(1)(am).

[3] It does not appear that the transcripts from this hearing are in this record. It is the appellant's duty to ensure that all items necessary to perfect an appeal are included in the record. *Beaupre v. Airriess*, 208 Wis. 2d 238, 250 n.8, 560 N.W.2d 285 (Ct. App. 1997). These transcripts are found in Geyser's co-actor's record, *State v. Weier*, 2015AP1836, at 115 and 116.

its decision on reverse waiver, the court also reviewed the parties' briefs on the subject (129:3).

At the oral ruling[4] deciding whether Geyser should be transferred to the juvenile system, the court first noted that it was Geyser's burden to prove by a preponderance of the evidence that (1) she could not receive adequate treatment in the criminal justice system; (2) transferring the case would not depreciate the seriousness of the crime; and (3) retaining jurisdiction was not necessary to deter her or others (129:4). The court also cited *Kleser*,[5] noting that it was permitted to consider the additional factors set forth in Wis. Stat. § 938.18(5) to make its decision (129:4-5). The court said,

> The criteria that I looked at under that statutory section are as follows: Personality of the juvenile, including whether the juvenile has a mental illness or developmental disability, the juvenile's physical and mental maturity, juvenile's pattern of living, prior treatment history and apparent potential for responding to treatment.
>
> Second, prior record of the juvenile, that's criminal record as to whether they had been previously waived in that case, originated something in adult court or originated in juvenile court but prior criminal or delinquency petitions and actions.
>
> A third criteria, the type and seriousness of the offense, including whether it was against persons or property and the extent to which it was committed in a violent, aggressive pre-meditated or willful manner.
>
> Fourth criteria would be the adequacy and suitability of facility services and procedures available for treatment of the juvenile and protection of the public within the juvenile

[4] The court issued its decision regarding reverse waiver for Geyser and Weier at the same proceeding (129).

[5] *State v. Kleser*, 2010 WI 88, ¶¶81-82, 328 Wis. 2d 42, 786 N.W.2d 144.

> justice system, and where applicable, the mental health system, and the suitability of the juvenile for placement in the Serious Juvenile Offender Program or the Adult Intensive Sanctions Program.
>
> The fifth criteria, the 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 in the court of criminal jurisdiction.

(129:5-6).[6]

The court turned to the allegations against Geyser (129:8). The State alleged that Geyser and Weier began plotting to kill PL in December 2013 or January 2014 and picked Geyser's birthday party in May to carry out the murder (129:8-9). The court said that both Geyser and Weier wanted to be a "proxy" for a fictional Internet character, Slenderman,[7] whom they both believed was real (129:8-9). The court stated that in order to become a "proxy" for Slenderman, the girls believed that they had to kill a person (129:8-9). The court stated that there was also testimony that the girls believed that if they did not kill someone, Slenderman would harm them or their families (129:9). The court said that eventually Geyser stabbed PL nineteen times and that the girls left her, telling her that they were going to get her help, but instead left to go find Slenderman (129:9). The court "easily [found] that this is a violent, premeditated, personal offense, doesn't involve any property damage whatsoever" (129:10).

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[6] These are the criteria set forth in Wis. Stat. § 938.18(5), which concerns waiver of a juvenile into adult court.

[7] "Slenderman" is a fictional figure from a website devoted to horror stories. *State v. Weier*, 2015AP1836 at 115:94-95. Waukesha Detective Michelle Trussoni testified at the preliminary hearing that Weier told her that once the girls killed PL "they would become proxies of Slenderman [and] they would then move up and live with Slenderman in [his] mansion." *Id*. at 115:84-85, 98.

Next, the court considered Geyser's mental health (129:12). The court acknowledged that Dr. Debra Collins diagnosed Geyser with schizophrenia and that Collins opined that it is important to treat schizophrenia early (129:12). But the court pointed out that Geyser had rejected medication for her illness, opting to continue to live in "the fictional world that she has operated in and have contact with the fictional characters that she's had contact with in the past" (129:13).[8] The court noted that expert witnesses testified that Geyser would do better in the juvenile system than the adult system and that meaningful services would not be available to her in the adult system (129:13).

The court stated that Dr. Kenneth Robbins testified that if Geyser were placed in an adult institution, it would worsen her schizophrenia (129:14). The court relayed that Robbins stated that Geyser would benefit from talk therapy (129:14). The court also acknowledged that correctional officers who had had contact with Geyser praised her creativity and agreed that she was never rude or disrespectful (129:14).

The court "recognize[d that Geyser's] conduct was based on a delusion concerning Slenderman" and that Geyser "continues to find Slenderman and the delusional characters important to her existence" (129:21).

In its ruling denying transfer, the court stressed its concern that if Geyser were transferred to the juvenile system, there would be no way to ensure her mental health treatment or the public's safety after she reached the age of eighteen (129:21-25). The court noted that if Geyser were found guilty in the adult system, she would begin her term of incarceration at

[8] At the reverse waiver hearing, Collins testified that Geyser hears the voice of a person named Maggie and has visits with characters from the Harry Potter books (126:35-36, 38-39).

Copper Lake School for Girls, where she would also have been sent as a juvenile offender (129:15-16). In other words, for the first several years of confinement – whether under a juvenile or adult disposition – Geyser's treatment plan would presumably be the same (129:15-16). The court also emphasized that the "vicious" nature of the offense would be depreciated by transferring Geyser to the juvenile system (129:24). Finally, the court found that transferring Geyser would offer no deterrent value (129:25). Ultimately, the court concluded that Geyser had failed to meet her burden to show that reverse waiver was appropriate (129:25).

Geyser filed a petition for leave to appeal the court's non-final order, which the State did not oppose (115; 116). This Court granted Geyser's petition (117).

ARGUMENT

The circuit court properly exercised its discretion to retain jurisdiction over the case because Geyser failed to meet her burden to warrant her transfer to juvenile court.

A. Standard of review and relevant law

The adult criminal court has "exclusive original jurisdiction" over a juvenile ten years old or older who is alleged to have attempted first-degree homicide. *See* Wis. Stat. § 938.183(1)(am). If the juvenile does not waive the preliminary hearing, the State must prove, and the court must find, probable cause of the attempted homicide. *See* Wis. Stat. § 970.032(1). If the court finds probable cause, the court must then determine whether to retain jurisdiction or to transfer jurisdiction to the juvenile system. *See* Wis. Stat. § 970.032(2). But the court "shall retain jurisdiction" unless it finds that the following considerations are satisfied:

> (a) That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.
>
> (b) That transferring jurisdiction to the [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 violation of which the juvenile is accused ….

Id.

It is the juvenile's burden to demonstrate that each of these statutory factors support transferring jurisdiction to the juvenile system. *Id.* The juvenile must demonstrate these factors by "a preponderance of the evidence," a standard of proof that is equivalent to the civil "greater weight of the credible evidence" standard. *See* Wis. Stat. § 970.032(2); *see also State v. Armstrong*, 223 Wis. 2d 331, 350 n.22, 588 N.W.2d 606 (1999).

Whether to transfer jurisdiction to the juvenile court is a discretionary decision for the trial court. *See State v. Verhagen*, 198 Wis. 2d 177, 191, 542 N.W.2d 189 (Ct. App. 1995). This Court must uphold a discretionary ruling when the record shows that the trial court considered the facts of the case and reached a reasonable conclusion that is consistent with applicable law. *See id.* This Court looks for reasons to sustain a trial court's discretionary decision. *See id.*

B. The trial court properly exercised its discretion in retaining jurisdiction.

In order to prove that she should be transferred to juvenile court, Geyser had to prove each of the three factors in Wis. Stat. § 970.032(2) by a preponderance of the evidence. *See State v. Kleser*, 2010 WI 88, ¶97, 328 Wis. 2d 42, 786 N.W.2d 144.

With regard to the first factor, Geyser argues that she demonstrated that her mental health would deteriorate in the adult system.[9] And, she argues, she showed that she would not receive adequate treatment in the criminal justice system.[10]

As for the second factor, Geyser argues that the court failed to "consider the unique nature of *this* offense – i.e. that [Geyser's] entry point to the criminal justice system was her psychotic condition."[11] Geyser appears to suggest that the circuit court found that a transfer to the juvenile system would depreciate the seriousness of the offense merely because of the nature of the *charge*, as opposed to the horrific nature of Geyser's specific crime.[12] Geyser also argues that somehow her pre-trial incarceration at a juvenile facility "mitigates any concerns about depreciating the seriousness of the offense."[13]

Finally, with regard to the last factor, Geyser argues that "[d]eterrence simply is not possible in every situation" and that she was "not required under Wis. Stat. § 970.032(2)(c) to affirmatively prove that transfer to juvenile court provides deterrence."[14] Geyser argues that deterrence is a non-factor in her case because a person "who seriously contemplates killing another human being in order to become a follower of Slenderman" will not be deterred by Geyser facing adult consequences for her actions.[15] None of Geyser's arguments show how the circuit court erroneously exercised its discretion.

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[9] Geyser's Br. at 8-12

[10] Geyser's Br. at 12.

[11] Geyser's Br. at 15 (emphasis in original).

[12] Geyser's Br. at 13-15.

[13] Geyser's Br. at 15.

[14] Geyser's Br. at 16.

[15] Geyser's Br. at 17.

1. The circuit court properly exercised its discretion in concluding that Geyser failed to show that she could not receive adequate treatment if it retained jurisdiction.

Geyser's argument that she proved that she could not receive adequate treatment in the criminal justice system is flawed. Although the circuit court acknowledged that Geyser presented "[t]estimony [] that meaningful services for [her] would not be available in the adult system[,]" this is not the end of the analysis (129:13). Geyser ignores that if convicted of attempted first-degree homicide, she will spend her first years at Copper Lake, which is where she would be if she were to be adjudicated delinquent in the juvenile system (129:15-16). Thus, for at least some period of time, the treatment options available to Geyser would be the same, regardless of whether she is in the juvenile system or the adult system. In this way, then, she failed to satisfy Wis. Stat. § 970.032(2)(a) because she cannot show that her immediate treatment in the criminal justice system would be inadequate.

More importantly, though, Geyser largely ignores the circuit court's nearly overarching concern with what would happen to Geyser after she turned eighteen years old were she to be in the juvenile system (129:18-19). The court stated,

> The key for this Court in evaluating treatment and evaluating the other criteria is what happens at age 18.
>
> In the juvenile justice system, the juvenile would be in the community. No restraints, no supervision, no overview to see what happens, to see what happens to the person who was 12 when they committed this offense to what they're like at age 16, 17, or 18 to be sure they're safe in the community.
>
> In the circuit court in the criminal justice system, depending upon the type of sentencing that is imposed,

> there would be either a custody supervision; that is, being held in custody, or supervision based upon extended supervision. There would be continued oversight over what happened.
>
> In the mental health area, the mental health type of supervision, mental health oversight, if you will, in the juvenile justice system ends at age 18. In the adult criminal division disposition, the oversight over mental health concerns and mental health status continues.
>
> There was testimony at the hearings involving the civil mental health system. The civil mental health system, each of these defendants – has no impact. The civil system mental commitment under Section 5120 of the Wisconsin Statutes, is a very specialized area, would not command continued treatment for anyone until certain circumstances occurred, which would be acting out in dangerous ways, but overall it would not provide for any oversight or continued mental health treatment.

(129:18-19). In other words, the court concluded that the juvenile system could not provide Geyser the long-term treatment that she needs.

To support her request for reverse waiver, Geyser was required to show that she "could not receive adequate treatment in the criminal justice system." Wis. Stat. § 970.032(2)(a). At the waiver hearing, Collins, a clinical psychologist retained by Geyser, testified that Geyser's mental health "needs are great and anticipated to be chronic and severe for years to come" (126:7, 12, 70). Dr. Kenneth Casimir, Assistant Medical Director at Winnebago Mental Health Institute, testified that Geyser's early-onset schizophrenia indicated "a more serious form" and said that she "would be expected to deteriorate more severely, require treatment more intensively" (127:79, 96).

Given this, the circuit court properly focused on Geyser's long-term prospects (129:18-19). The juvenile justice system

could not satisfy the court's valid concerns. Although the court acknowledged that Taycheedah, the facility at which Geyser would eventually end up were she to be convicted, was overcrowded and there currently exists a waiting list for programming, "[m]ental health needs are addressed as well [] in the state correctional system" (129:16-17). And, again, the court noted that the first few years of Geyser's confinement would be at the same place – Copper Lake – regardless of which forum her case is in (129:17). Geyser failed to show that the criminal justice system could not support her needs for continued treatment.

Geyser argues that the circuit court somehow erred by considering treatment options in the juvenile system because *Kleser* "repudiate[d]" part of *Verhagen* and left the part of *Dominic E.W.*[16] in which this Court stated that a circuit court is permitted to consider treatment in the juvenile system and compare it to that in the adult system "without any legal underpinning.[17] Putting aside that the State fails to understand how the circuit court's consideration of treatment options at Copper Lake could have harmed Geyser, Geyser fails to show how *Kleser* "repudiated" the language he cites from *Verhagen* and then left *Dominic E.W.* unmoored.

Geyser correctly points out that in *Verhagen* this Court noted that the circuit court had acknowledged that the adult system may not provide the same level of treatment as the juvenile system.[18] *See Verhagen*, 198 Wis. 2d at 193. But the trial court had concluded that the other statutory factors weighed in favor of retaining jurisdiction. *Id.* Geyser is right when she states that this Court stated that the trial court "balanced the

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[16] *State v. Dominic E.W.*, 218 Wis. 2d 52, 579 N.W.2d 282 (Ct. App. 1998).

[17] Geyser's Br. at 10.

[18] Geyser's Br. at 9-10.

relevant legal criteria."[19] *Id.* at 194. Geyser is also right when she states that this Court, in *Dominic E.W.*, stated that under Wis. Stat. § 970.032(2), the trial court is permitted "to balance the treatment available in the juvenile system with the treatment in the adult system[.]"[20] *State v. Dominic E.W.*, 218 Wis. 2d 52, 56, 579 N.W.2d 282 (Ct. App. 1998).

But then Geyser confusingly argues that *Kleser*'s statement that the juvenile must prove all three statutory factors – a statement that is nothing more than a plain reading of Wis. Stat. § 970.032(2) – means that the court cannot consider treatment in the juvenile system.[21] As stated, the State fails to understand how the circuit court's consideration of treatment harms her. But also, Geyser's citation to *Kleser* does not undermine *Verhagen* and *Dominic E.W.* Instead, the portion of the case on which Geyser relies merely states that she is responsible for proving all three factors in § 970.032(2). *State v. Kleser*, 2010 WI 88, ¶97, 328 Wis. 2d 42, 786 N.W.2d 144.

In addition, the statute requires that Geyser demonstrate that she could not receive *adequate* treatment in the criminal justice system, not that she could not receive better treatment or the best available treatment. *See* Wis. Stat. § 970.032(2)(a). The circuit court found that "[m]ental health needs are addressed" in the criminal justice system (129:16).

Finally, the court correctly noted that Geyser had rejected medication for her schizophrenia (129:12-13). Casimir testified that Geyser told him that it would be delusional to take medication to make her stop believing in Slenderman (129:12-13). Collins testified that Geyser does not want the voices she

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[19] Geyser's Br. at 10.

[20] Geyser's Br. at 10.

[21] Geyser's Br. at 10.

hears to go away because they are her friends and from Geyser's perspective, "[s]he has no other friends or close family members" (126:62). But both Casimir and Collins testified that medication is fundamental to the treatment of schizophrenia (126:56, 59; 127:96).

The circuit court was tasked with addressing the record before it in order to determine whether Geyser had proven that transfer was warranted. The record alleged that a schizophrenic girl planned and executed a plot to murder one of her best friends, stabbing her nineteen times (1). Geyser argues that but for her illness, she would not have committed the horrific offense.[22] That may be. But Geyser will not take medication for her schizophrenia, which would be the first step in treating it. So to suggest that she has demonstrated that the criminal justice system cannot adequately treat her when she is complicit in refusing treatment is disingenuous.

2. The circuit court properly exercised its discretion in determining that transferring jurisdiction would depreciate the seriousness of the crime.

Geyser argues that she met her burden of proof to establish that transferring her to the juvenile justice system would not depreciate the seriousness of the crime.[23] Geyser seems to argue that the circuit court painted with too wide a brush and declined to transfer jurisdiction *only* because Geyser was accused of attempted first-degree homicide.[24] Geyser argues that the circuit court erred in not "consider[ing] the unique nature of *this* offense – i.e. that [her] entry point to the

[22] Geyser's Br. at 15.

[23] Geyser's Br. at 13.

[24] Geyser's Br. at 12-14.

criminal justice system was her psychotic condition."[25] She also argues that the court "failed to consider [her][26] argument that the State's treatment of [her] while the present case has been pending mitigates any concerns about depreciating the seriousness of the offense."[27] Geyser has failed to demonstrate any erroneous exercise of the circuit court's discretion.

First, it is incredible to suggest, as Geyser does, that the circuit court refused to transfer jurisdiction solely because the crime was one enumerated in Wis. Stat. § 938.183.[28] Geyser ignores that her crime was not just "serious,"[29] as she admits, but that the circuit court found it "vicious" (129:25). The court deemed the crime "violent, premeditated" and "personal" (129:10). The court stated that "[t]here was a conscious decision at the time of the offense to let the victim die"(129:20). Further, the court emphasized,

> This was charged as attempted murder, but you have to keep in mind for both defendants that this was in fact not a happenstance that just didn't work out, they would have killed P.L. had they had more time had they thought about it. This was an effort to kill someone, not a mistake by hitting them too hard, not a mistake by pushing them too hard. This was premeditated murder and an attempt to do so.
>
> The court notes, too, telling the victim to remain quiet, telling the victim that they would leave to get help, all this goes to the nature of the offense and to the characterization of what occurred and it's important for the

[25] Geyser's Br. at 15.

[26] Geyser's brief often refers to herself by her party designation, as opposed to her name, contrary to Wis. Stat. § 809.19(1)(i).

[27] Geyser's Br. at 15.

[28] Geyser's Br. at 14.

[29] Geyser's Br. at 13.

> court to consider those circumstances in deciding what happens.

(129:20-21). Geyser is not alleged to have acted in a moment of passion or emotion, but instead to have plotted and planned to kill her best friend. The circuit court amply explained just how serious Geyser's crime was and how transferring her case would depreciate that seriousness.

Second, Geyser's argument that her pretrial detention in a juvenile facility somehow mitigates any concern the court should have over whether transferring her would depreciate the offense is without merit. Geyser offers no support for her argument that where a defendant is housed before trial should be used to offset the depreciation of the offense that transferring the case to juvenile court would do. This is not surprising because one has nothing to do with the other. Geyser's "confinement experience over the last 18 months" does not address the court's concern that transferring her case to the juvenile system would diminish the horrific nature of her crime.

3. The circuit court properly exercised its discretion in determining that Geyser failed to establish that retaining her case is the adult system is not necessary to deter her and others from committing other crimes.

With regard to the third and final factor of Wis. Stat. § 970.023(2), Geyser argues that the circuit court erroneously exercised its discretion in finding that she had failed to satisfy her burden because "[d]eterrence simply is not possible in every situation."[30] Geyser argues that neither the

[30] Geyser's Br. at 16.

criminal justice system nor the juvenile justice system "can effectively deter an individual who believes that he or she must kill another human being in order to become a follower or Slenderman, or in order to prevent Slenderman from harming his or her family."[31] Geyser criticizes the circuit court for stating that the public must be assured that this crime does not repeat itself because "treatment and protection of the public are not the same as deterrence."[32] Geyser misunderstands the law and the record.

Under Wis. Stat. § 970.032(2)(c), Geyser had to show that keeping her in the criminal justice system was not necessary to deter her, or others, from committing other crimes. The circuit court stated,

> There has to be assurance that [this crime] 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, that short-term controls and oversight simply are not necessary.
>
> I'm satisfied that longer term control is necessary for the reasons that I've stated. I'm satisfied as to each of the defendants then that on the issue of deterrence, to return to the juvenile system does not offer deterrence. I'm satisfied then that the defendants have failed to meet their burden of deterrence by a preponderance of the evidence.

(129:25).

First, Geyser's argument that deterrence is not possible here because "[n]o one who seriously contemplates killing another human being in order to become a follower of

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[31] Geyser's Br. at 17.

[32] Geyser's Br. at 18-19.

Slenderman takes into consideration the potential legal consequences of such an act" is misguided for at least two reasons.[33] One, under Geyser's view, deterrence would nearly always be impossible. But the Legislature has mandated that the defendant, in order to be transferred to the juvenile system, prove that staying in the criminal justice system is not necessary to deter her and others. *See* Wis. Stat. § 970.032(2)(c). And courts have recognized deterrence as a legitimate penological goal. *See, e.g., Graham v. Florida*, 560 U.S. 48, 71 (2010). Two, Geyser ignores that at least part of the reason the circuit court concluded that Geyser had failed to meet her burden on deterrence is that she had failed to show that she would not reoffend if placed in the juvenile system. In other words, she had not shown that it was not necessary for her to stay in the criminal justice system in order to deter *her* from further crimes. This was, in part, because of her severe mental illness that she was refusing to take medication for.

Second, and similarly, Geyser's argument that the circuit court's statements regarding the protection of the public "missed the mark" is incorrect.[34] Citing *State v. Carpenter*, 197 Wis. 2d 252, 271, 541 N.W.2d 105 (1995), Geyser says that "treatment and protection of the public are not the same as deterrence."[35] *Carpenter* concerned whether Wisconsin's sex offender commitment statute was unconstitutional. 197 Wis. 2d at 258. The portion of the case Geyser highlights states that the principal purposes of the civil commitment law are to protect the public and to treat the sex offender, as opposed to "only serving the punishment goals of deterrence or retribution." *Id.* at 271. *Carpenter* is not relevant here.

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[33] Geyser's Br. at 17.

[34] Geyser's Br. at 18.

[35] Geyser's Br. at 18-19.

While treatment, protection of the public and deterrence may very well be different concepts, the circuit court was charged with determining whether retaining Geyser in the criminal justice system was necessary to deter *her* (as well as others) from committing another serious crime. Because the concept of deterrence in this setting is inextricably entangled with the need to protect of the public, the circuit court's expression of concern that the juvenile system would not serve to protect the public was appropriately tied to its evaluation of deterrence. Casimir's testimony supported the circuit court's conclusion. Casimir testified that sending Geyser to the juvenile justice system, in his opinion, "would be a very dangerous way to proceed" (127:107).

Finally, Geyser is wrong when she states that "[t]he circuit court erred when it presumed that retaining jurisdiction in 'adult' court does, in fact, effectively deter."[36] Geyser ignores that it was her burden to demonstrate that retaining the case in the criminal justice system was not necessary to deter her or others from committing serious crimes. The circuit court did not *presume* that retention was necessary, but instead concluded that Geyser had not satisfied her burden (129:25).

***

In sum, Geyser has not proven even one of the three factors necessary in order to allow her transfer to the juvenile justice system, much less has she satisfied all three by a preponderance of the evidence. But even if this Court were to find that she had satisfied one of the Wis. Stat. § 970.032(2) factors – say, that she would not receive adequate treatment in the criminal justice system – that is not enough to meet her burden and transfer her to the juvenile system. Even Geyser acknowledges that if she failed to prove one factor in Wis. Stat.

[36] Geyser's Br. at 19.

§ 970.032(2), the circuit court could not grant the reverse waiver.[37]

And surely here, by the circuit court's recitation of the seriousness of the crime and the need for deterrence, the court did not erroneously exercise its discretion in denying transfer. After all, the record reflects that the circuit court properly examined the record and the law and arrived at a thoughtful, reasoned decision. This is what is required of the court and, for this reason, this Court should sustain the decision. *See Dominic E.W.*, 218 Wis. 2d at 55.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the order of the circuit court.

Dated this 25th day of February, 2016.

Respectfully submitted,

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[37] Geyser's Br. at 10.

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,915 words.

_____
Katherine D. Lloyd
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 25th day of February, 2016.

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Katherine D. Lloyd
Assistant Attorney General