STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT III

Case No. 2024AP189-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

C. T. P.-B.,

Defendant-Appellant.

ON APPEAL FROM A NONFINAL ORDER DENYING REVERSE WAIVER IN THE CIRCUIT COURT FOR CHIPPEWA COUNTY, THE HONORABLE STEVEN H. GIBBS PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION

C.T.P.-B., 14 years old, brutally raped and murdered a ten-year-old girl. He took her into the woods, hit her in the stomach, hit her with a large stick, struck her in the head, strangled her until she died, then tried to have sex with her. He left her body where he killed her until he heard about her being missing, determined he needed to hide her better, returned, dragged her to another spot, and covered her with leaves. He later stated it was his intention to rape and kill the victim. C.T.P.-B. was charged in adult court with first-degree intentional homicide, first-degree sexual assault, and first-degree sexual assault of a child under 13 with resulting great bodily harm.

After a hearing, the circuit court denied C.T.P.-B.'s motion for reverse waiver, finding he had failed to prove that reverse waiver would not depreciate the seriousness of the offenses. The court found that C.T.P.-B. had met his burden on the other two reverse waiver criteria.

C.T.P.-B. appeals the court's reverse waiver decision, arguing the court erroneously exercised its discretion. This Court should affirm. C.T.P.-B. cannot meet his high burden to show that the circuit court erroneously exercised its discretion in finding that reverse waiver would depreciate the seriousness of the offenses. This Court must search the record for reasons to sustain the circuit court's decision. These crimes are extraordinarily serious—the premeditated intent to kill and rape a child. The record supports the circuit court's decision. This Court should affirm.

ISSUE PRESENTED

Did the circuit court erroneously exercise its discretion when it found that C.T.P.-B. failed to meet his burden to show that reverse waiver would not depreciate the seriousness of the offense?

The circuit court answered: C.T.P.-B. did not meet his burden.

This Court should answer: the circuit court properly exercised its discretion because its decision is supported by the record.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication, as this case can be resolved by applying well-established legal principles to the facts of the case. As a case involving a circuit court's exercise of discretion, the law is well settled, so publication is not warranted.

STATEMENT OF THE CASE

A. C.T.P.-B. murders and sexually assaults the ten-year-old Victim, and the State charges him in criminal court.

Victim[1], a ten-year-old girl, was found deceased one day after she was reported missing. (R. 1:1–2.) She had injuries consistent with blunt force trauma to the head, and she was naked from the waist down. (R. 1:2.) The autopsy noted "anal tearing and biological evidence consistent with a sexual assault." (R. 1:2.)

A police detective interviewed C.T.P.-B., who was 14 years old. (R. 1:1–2.) He admitted to taking Victim into the woods. (R. 1:2.) It was "his intention to rape and kill Victim." (R. 1:2.) They went off the trail, he punched her in the stomach, and hit her "in the head approximately 3 times with

[1] While the victim of a homicide need not normally be referred to by a pseudonym, the victim in this case has consistently been referred to only as Victim, so the State will do so as well. Wis. Stat. § (Rule) 809.86(3).

a large stick." (R. 1:2.) He straddled Victim, "and strangled her until he believed Victim was deceased." (R. 1:2.) He "then removed [her] pants and began trying to have sex with her." (R. 1:2.) He then fled, but when he "heard Victim was missing[, he] determined he needed to hide her better." (R. 1:2.) So, "he returned to Victim's body, drug her a few feet, and covered her with leaves." (R. 1:2.)

The State charged C.T.P.-B. in criminal court with first-degree intentional homicide, first-degree sexual assault, and first-degree sexual assault of a child under 13 with resulting great bodily harm. (R. 1.)

B. C.T.P.-B. petitioned for reverse waiver for transfer to juvenile court.

C.T.P.-B. petitioned for reverse waiver to transfer jurisdiction to juvenile court. (R. 56:1.) He argued that treatment in the adult system would be inadequate to address his needs because the juvenile system has targeted programs for serious offenders. (R. 56:9–14, 18–20.)

C.T.P.-B. argued that research and statistics showed that transferring jurisdiction would not depreciate the seriousness of the offenses because members of the public have complex attitudes about youth crime and CCAP[2] data showed that "the decision to treat a juvenile as an adult is a rare one." (R. 56:21–23.) Additional CCAP data suggested that 14-year-olds more often have their cases heard in juvenile court than are waived into adult court. (R. 56:23–24.)

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[2] "CCAP is a case management system provided by Wisconsin Circuit Court Access program (WCCA). It provides public access online to reports of activity in Wisconsin circuit courts for those counties that use CCAP. Circuit court employees enter all CCAP data in the county where the case files are located, and the information feeds into the statewide access system." *State v. Bonds*, 2006 WI 83, ¶ 6, 292 Wis. 2d 344, 717 N.W.2d 133.

He argued that his treatment needs that could be addressed in the juvenile system meant that transferring jurisdiction would not depreciate the seriousness of the offense. (R. 56:24–25.) He noted that the most severe punishment option in the juvenile system could still have him in confinement for 11 years. (R. 56:25–26.) He argued that the State could attempt to keep him committed under a Chapter 980 commitment. (R. 56:26–27.)

Finally, C.T.P.-B. argued that retaining jurisdiction was not necessary to deter him or other juveniles. (R. 56:29–36.) C.T.P.-B. felt he did not need specific deterrence because he already told his evaluators that he was "devastated by the crimes he committed." (R. 56:31.) He dismissed general deterrence for other juveniles because "[b]eing placed in custody until 25 years of age is a lifetime to a young person." (R. 56:33.)

C. The circuit court held a multiple-day hearing on the petition for reverse waiver.

1. C.T.P.-B. presented multiple witnesses on the treatment available in the juvenile and adult systems.

Casey Gerber, the director of the Office of Juvenile Officer Review at the Department of Corrections, testified about Lincoln Hills, the Type 1 facility for juvenile males and the services available. (R. 80:69–95.) She testified about the Serious Juvenile Offender Program (SJO), which "offers a longer term of supervision than the standard correctional order for certain statutorily eligible offenses." (R. 80:73.) One type of SJO program is the SJO-A, which is only for first-degree intentional homicide offenders, and "the length of that order would be until the juvenile is 25 and there's a minimum confinement of one year before the juvenile can be released . . . back to the community." (R. 80:73.) While an SJO juvenile

could be confined at Lincoln Hills for the entire length of their order, "[i]t probably won't happen." (R. 80:86.)

Juveniles sentenced to Lincoln Hills under the adult system have the same access to programming, and progress through programming that other juveniles have. (R. 80:72, 81, 88.)

Alicia Weix, a field supervisor of probation and parole agents for the Division of Juvenile Corrections at the Wisconsin Department of Corrections, testified about the supervision of juveniles released from Lincoln Hills. (R. 80:96–128.) She testified that no one was currently on SJO-A supervision, and only a few had been in the past 12 years. (R. 80:118–19.) The level of the charges does not affect the ability to be released after only one year. (R. 80:119.) Residential care facilities generally do not allow juvenile supervisees beyond 18 years old, but one facility allows placement until 21 or 22. (R. 80:120–121.) They might be able to place an older supervisee through adult services. (R. 80:122.)

2. C.T.P.-B. presented multiple witnesses regarding his psychological and treatment needs.

Dr. Michael Caldwell, formerly a senior staff psychologist with the Mendota Juvenile Treatment Center, was hired by C.T.P.-B. to review his file, meet with him, and prepare a report. (R. 81:33, 38–41.) C.T.P.-B. self-reported that he is not prone to violence and rarely feels angry. (R. 81:49–50.) C.T.P.-B. had an average IQ and an autism spectrum disorder. (R. 81:47–48, 50–51.) Dr. Caldwell said C.T.P.-B. "lacks what's called a theory of mind. They can't understand that other people experience - - they can't understand other people's experience at all." (R. 81:51.) Based on his assessment, Dr. Caldwell did not believe that C.T.P.-B. had "a sadistic sexual disorder." (R. 81:54–55.) Being asked to

prepare a report in anticipation of a reverse waiver hearing, Dr. Caldwell administered several assessments. (R. 81:57–58.) C.T.P.-B. generally scored low risk, meaning his mental health issues care were understood in the mental health field and could be treated. (R. 81:58–64.)

Dr. Caldwell testified that C.T.P.-B. could be eligible for a Chapter 980 commitment even after he turned 25 if he was waived into juvenile jurisdiction. (R. 81:77, 99.) However, he did not evaluate C.T.P.-B. for a Chapter 980 assessment, or even whether C.T.P.-B. has a qualifying medical diagnosis under Chapter 980. (R. 81:101–02.)

Dr. Caldwell's low risk assessment, though, would have equally applied the day before C.T.P.-B. committed the homicide and sexual assault but the assessment could not have predicted C.T.P.B.'s actions. (R. 81:82.) He believed that C.T.P.-B.'s autism spectrum disorder and exposure to pornography played a part, and he could not give any assurances that C.T.P.-B. would not do something similar in the future. (R. 81:83.) C.T.P.-B.'s autism spectrum disorder would have caused "certainly a diminished capacity to understand the harm that it would cause to the victim and how the victim might respond." (R. 81:84.) Dr. Caldwell could not specifically describe how a person with autism would work their way through treatment in the adult system as opposed to the juvenile system because "[i]t would depend on the assessment at the time and depend on the services that [each system] can muster." (R. 81:115–16.)

Dr. Steven Benson, a clinical psychologist, testified about the services available at the Wisconsin Resource Center. (R. 81:146, 151–52.) He met with C.T.P.-B. and also believed C.T.P.-B. had autism spectrum disorder. (R. 81:155.) He did not believe that current staffing and training allowed the Wisconsin Resource Center to provide "services specific to the treatment of autism spectrum disorder." (R. 81:151–53, 188–90.)

Dr. James Garbarino, a developmental psychologist, reviewed C.T.P.-B.'s file and concluded that, in his opinion, C.T.P.-B. was the sort of juvenile in an adolescent crisis, whose crisis can be overcome in a few short years and then released back into the public. (R. 82:4,14–16.) The ability to place a juvenile on supervision until the age of 25 reassured him in his position that C.T.P.-B. could be rehabilitated. (R. 82:16.) He believed this would be appropriate in "a structured residential adolescent treatment program rather than long-term adult incarceration." (R. 82:21–22, 24–25.) He believed that because C.T.P.-B. felt "grief stricken" about what he had done, "to treat him as a juvenile will not depreciate the seriousness in his mind." (R. 82:31.) In his report, he opined that treating C.T.P.-B. as a juvenile would not depreciate the seriousness of the crime because it would "give him hope that he can be redeemed." (R. 82:32.) Juvenile placement would be "much more likely to provide" C.T.P.-B. with "practice in behaving in a positive way, being treated with dignity and respect." (R. 82:33.) He stated that the consensus in the social science literature was that "treating juveniles like adults has no deterrent effect on the community," so treating C.T.P.-B. as a juvenile would therefore not depreciate the seriousness of the offense. (R. 82:33–36.) He also believed that C.T.P.-B.'s exposure to pornography also meant that treating him as a juvenile would not depreciate the seriousness of the offense because it was a "collective societal responsibility and here's the way to express that in how we respond to an individual child who fell victim to it." (R. 82:38–39.)

Dr. Garbarino conceded that his analysis of the seriousness of the offense focused on who C.T.P.-B. is and not what he had done. (R. 82:47.) He analogized not granting C.T.P.-B. reverse waiver to sending a six-year-old child back to "a highly abusive parent." (R. 82:48.)

Dr. Garbarino agreed that C.T.P.-B.'s actions were premeditated, "not just a spur of the moment." (R. 82:53.)

3. Finally, C.T.P.-B. presented a witness who compiled data about court cases involving waiver.

Barry Widera, the founder of Court Data Technologies, prepared a report of cases from CCAP "that were either moved from criminal court to juvenile court or from juvenile court to criminal court." (R. 82:70–71.)

D. After the hearing, the parties filed briefs.

After the hearing, the parties filed briefs and responses. The State went over the facts of the case and the autopsy findings to illustrate the violent, egregious, and premeditated nature of C.T.P.-B.'s actions. (R. 88:2–5.) The "vicious" nature of C.T.P.-B.'s attack on Victim weighed heavily against transferring jurisdiction. (R. 88:5–6.) The wide difference between the criminal sentence C.T.P.-B. faced as opposed to a juvenile disposition "would unduly depreciate the seriousness of the violent, vicious, egregious and brutal actions of [C.T.P.-B.] as he carried out his premeditated plan to rape and kill" Victim. (R. 88:5.)

C.T.P.-B. argued that "[t]he severity of an offense is a poor proxy for future offense risk." (R. 89:28.) He argued that "[t]he purposes of the adult system are not specifically laid out in the statutes. However, they can be inferred from the purposes of criminal sentencing, commonly referred to as the Gallion[3] factors." (R. 89:28 (footnote added).) Though he did

[3] *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. "There are three main factors circuit courts must consider in determining a defendant's sentence: (1) the gravity of the offense; (2) the character of the defendant; and (3) the need to protect the public." *State v. Williams*, 2018 WI 59, ¶ 46, 381 Wis. 2d 661, 912 N.W.2d 373.

not introduce them into evidence, C.T.P.-B. again cited to studies about public attitudes toward juvenile crime and rehabilitation. (R. 89:28.) He used Barry Widera's data to conclude that waiver into adult court is rare, and reverse waiver is more common, especially for 14-year-olds. (R. 89:29–30.) C.T.P.-B. pointed to the evidence he presented that he had "a diminished capacity to understand the harm that his actions would cause and how the victim would respond," and he "did not understand the consequences of his actions due to developmental delays." (R. 89:32.)

Without citation, he argued that depreciation means "1) protection of the public, 2) the message sent to the specific juvenile at issue, and 3) the impact on the social welfare derived from how the system treats a juvenile." (R. 89:33.) He argued that reverse waiver would address his treatment needs in a way that would reduce his risk of recidivism, whereas the inadequate treatment in the adult system would risk not addressing his needs. (R. 89:33–34.) He argued that the possibility of an SJO disposition that could last until he was 25 years old would not unduly depreciate the seriousness of the offense because the 11 years he faced on a dispositional order "is nearly double the length of his lifetime at the time he was placed in custody." (R. 89:34.)

He also mentioned that he would "very likely be placed on the sex offender registry" and could be subject to a Chapter 980 commitment. (R. 89:36.) C.T.P.-B. argued that reverse waiver would "benefit society by preventing [the] negative consequences" of the financial cost of adult incarceration and disrupting C.T.P.-B.'s social and personal development. (R. 89:37–38.)

The State responded that C.T.P.-B. incorrectly asked the circuit court to "balance the seriousness of the offense against his treatment needs." (R. 90:2.) The State contended that calling C.T.P.-B.'s actions "'violent', 'vicious' and 'brutal'" and that C.T.P.-B. "understood the severity of his actions"

were fair characterizations based on the facts of the case. (R. 90:3–4.) And C.T.P.-B. had not met his burden to show that transferring jurisdiction would not unduly depreciate the seriousness of the offense. (R. 90:4–5.)

C.T.P.-B. replied that "the seriousness of the offense is not the issue at a Reverse Waiver hearing. The issue is whether transferring jurisdiction would depreciate the seriousness of the offense" and again pointed to his "psychological conditions that existed at the time of the offense." (R. 91:2.)

E. In a written decision, the circuit court denied C.T.P.-B.'s petition because he failed to meet his burden to show that reverse waiver would not depreciate the seriousness of the offense.

The circuit court issued a written decision. (R. 92.) The court went over the facts of the case from the criminal complaint and the testimony from the reverse waiver hearing. (R. 92:1–3.) The court found that C.T.P.-B. met his burden to prove the first and third criteria—that he could not receive adequate treatment in the adult system and that retaining jurisdiction was not necessary to deter C.T.P.-B. or other juveniles. (R. 92:16–17, 20–21.)

However, the circuit court found that C.T.P.-B. did not meet his burden to prove that transferring jurisdiction would not depreciate the seriousness of the offense. (R. 92:20.) The court went over the relevant facts:

- On April 24, 2022, the defendant convinced the 10 year-old victim to leave a residence and go with him down a trail in the City of Chippewa Falls.
- When the defendant left the residence it was already his intention to rape and kill the victim.

- The defendant admitted that the physical assault of the young victim was vicious and brutal in nature, involving punching the victim, knocking the victim down and hitting the victim with a stick.
- The victim's autopsy findings, which noted evidence of "homicidal violence" to include:

1) Blunt force trauma to the head and body, including:

- Contusions and abrasions of the face and head.
- Contusion of the left lower lip mucosa.
- Contusions and abrasions to the chest, abdomen, and legs.
- Contusions of the left arm and right foot.
- Abrasions of the hands and feet.
- Subgaleal hemorrhage.

2) Sharp force injury, to include:

- Probable left side of the jaw- depth- 3/8 inch.
- Anterior neck.
- Possible inner aspect of the right thigh.

The defendant admitted that after violently attacking the young victim, he strangled the young victim until he believed she was dead. The autopsy findings, which noted evidence of "manual strangulation" to include:

- Abrasions on the chin, jaw, and anterior neck.
- Petechiae of the upper and lower eyelids, upper and lower conjunctivae, and sclerae of both eyes.
- Hemorrhage of the anterior neck muscles.

The defendant admitted that he removed the victim's pants and began trying to have sex with her. The defendant also recalled biting the victim. The autopsy findings, which noted evidence of "sexual assault" to include:

- Lacerations of the anus.
- Bite-mark on the left buttock.
- White mucoid material in the rectum/sigmoid colon.
- Contusions of the rectal/sigmoid mucosa.
- Hemorrhage of the serosa of the rectum/sigmoid colon.

(R. 92:18–19.)

The court recited the charges against C.T.P.-B. and noted that "[t]here are no more serious crimes." (R. 92:19.) It found that C.T.P.-B.'s actions "were violent and egregious in nature" because C.T.P.-B. "carried out his plan to rape and murder a ten-year-old girl, viciously and with brutality." (R. 92:20.) It found C.T.P.-B.'s actions "clearly premeditated." (R. 92:20.)

The circuit court did not agree with C.T.P.-B. that the *Gallion* factors "prove[d] that the reverse waiver would not depreciate the seriousness of the offense." (R. 92:20.) It "disagree[d] that a possible ten year confinement in the juvenile system, registering as a sex offender, and that [C.T.P.-B.] would be vulnerable to the adult system would be punishment enough." (R. 92:20.)

C.T.P.-B. appeals the denial of his petition for reverse waiver.

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 (Ct. App. 1998). "An appellate court will affirm a discretionary decision 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,

786 N.W.2d 144. "When reviewing a trial court's exercise of discretion, [this Court] will look for reasons to sustain the decision." *State v. Verhagen*, 198 Wis. 2d 177, 191, 542 N.W.2d 189 (Ct. App. 1995).

ARGUMENT

The circuit court properly exercised its discretion when it denied C.T.P.-B.'s petition for reverse waiver.

A. The law presumes that defendants under 17 years old charged with crimes remain in criminal court, and the decision on whether to reverse waive the case to juvenile jurisdiction rests with the circuit court's discretion.

"'Reverse waiver' refers to the procedure by which an adult court transfers a case against a juvenile offender to juvenile court." *State v. Toliver*, 2014 WI 85, ¶ 18 n.7, 356 Wis. 2d 642, 851 N.W.2d 251. After a preliminary examination, "[i]f the court finds probable cause to believe that the juvenile has committed the violation of which he or she is accused . . . the court shall determine whether to retain jurisdiction or to transfer jurisdiction" to the juvenile court. Wis. Stat. § 970.032(2).

Wisconsin Stat. § 970.032(2) provides that the court shall retain adult court jurisdiction unless the juvenile proves by a preponderance of the evidence all of the following:

> (a) That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.
>
> (b) That transferring jurisdiction to the court assigned to exercise jurisdiction under . . . [ch.] 938 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 . . . .

See Kleser, 328 Wis. 2d 42, ¶¶ 51, 67–68. The procedure set forth in Wis. Stat. § 970.032(2) is commonly referred to as reverse waiver. *See Kleser*, 328 Wis. 2d 42, ¶ 67. This "presumes that the child will be kept in the adult system unless" the defendant meets their burden. *Verhagen*, 198 Wis. 2d at 187–88.

"A decision to retain or transfer jurisdiction in a reverse waiver situation is a discretionary decision for the trial court." *Dominic E.W.*, 218 Wis. 2d at 56. "Although the usual situation under the reverse waiver statute is that the criminal court will retain jurisdiction over the juvenile, it is not mandatory." *Id*. at 59.

When reviewing a circuit court's discretionary ruling, this Court does not determine whether it thinks the ruling was "'right' or 'wrong.'" *State v. Jeske*, 197 Wis. 2d 905, 913, 541 N.W.2d 225 (Ct. App. 1995). Rather, the discretionary decision "will stand unless it can be said that no reasonable judge, acting on the same facts and underlying law, could reach the same conclusion." *Id.* "It is not important that one trial judge may reach one result and another trial judge a different result based upon the same facts." *State v. Ronald L.M.*, 185 Wis. 2d 452, 463, 518 N.W.2d 270 (Ct. App. 1994).

B. The circuit court properly determined that C.T.P.-B. failed to meet his burden to prove that reverse waiver would not unduly depreciate the seriousness of the offense.

As noted, "[i]n a reverse waiver hearing, the juvenile must prove all elements set out in [Wis. Stat.] § 970.032(2)(a), (b), and (c) by a preponderance of the evidence." *Kleser*, 328 Wis. 2d 42, ¶ 7. Specifically, the juvenile defendant must show that (1) "if convicted, the juvenile could not receive adequate treatment in the criminal

justice system"; (2) "transferring jurisdiction to juvenile court would not depreciate the seriousness of the offense"; and (3) "retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the juvenile is accused." *Id.* ¶ 72. This case concerns only the second element.

To determine whether reverse waiver would depreciate the seriousness of the offense, "the court must decide under the specific facts and circumstances of the case how serious the offense was." *Dominic E.W.*, 218 Wis. 2d at 58 n.6. In *Verhagen*, for example, the circuit court properly addressed this criterion when it "described Verhagen's conduct as 'a vicious major attack' and concluded that transferring jurisdiction to the juvenile court would depreciate the seriousness of the offense." *Verhagen*, 198 Wis. 2d at 193.

The circuit court here examined the relevant facts to determine the seriousness of the offense, applied the correct legal standard, and reached a reasonable conclusion. *See Kleser*, 328 Wis. 2d 42, ¶ 37. The circuit court listed out the relevant facts about C.T.P.-B.'s conduct in this case. (R. 92:18–19.) This includes the number and severity of Victim's injuries and the severity of her cause of death. (R. 92:18–19.) C.T.P.-B., intending to murder and sexually assault Victim, convinced her to go down a trail with him. (R. 92:18.) The court found that C.T.P.-B. "admitted that the physical assault of the young victim was vicious and brutal in nature, involving punching the victim, knocking the victim down and hitting the victim with a stick." (R. 92:18.) Victim's autopsy found that she had blunt force trauma to her head and sharp force injury, concluding that she suffered "homicidal violence." (R. 92:18.) The circuit court found that C.T.P.-B. admitted that, after strangling Victim, "he removed the victim's pants and began trying to have sex with her." (R. 92:19.) Victim's autopsy corroborated evidence of sexual assault. (R. 92:19.)

The circuit court found C.T.P.-B.'s actions "were violent and egregious in nature. [C.T.P.-B.] carried out his plan to rape and murder a ten-year-old young girl, viciously and with brutality. This crime was clearly premeditated by" C.T.P.-B. (R. 92:20.) The court found that the "possible ten year confinement in the juvenile system" would not "be punishment enough." (R. 92:20.)

The circuit court therefore identified the relevant facts about C.T.P.-B.'s conduct and made reasonable conclusions and inferences based on the admitted conduct to arrive at its estimation of the seriousness of the offense. It noted that two of the charged crimes are Class A felonies and "[t]here are no more serious crimes than Class A felonies in the Wisconsin Statutes." (R. 92:19.)

The court went on to identify the correct legal standard: whether C.T.P.-B. had met his burden to show that reverse waiver would not depreciate the seriousness of the offense. (R. 92:20.) It concluded, though, that the maximum available disposition in the juvenile system was insufficient and would, therefore depreciate the seriousness of the offense. (R. 92:20.) This is a reasonable conclusion, supported by the record, so this Court should affirm. *Kleser*, 328 Wis. 2d 42, ¶ 37.

C.T.P.-B. argues without citation that the circuit court "is to determine not whether the specific facts of the offense are serious, but instead whether transferring the case to juvenile court would depreciate the seriousness of the offense." (C.T.P.-B.'s Br. 18.)[4] To the contrary, "the court must decide *under the specific facts and circumstances of the case* how serious the offense was." *Dominic E.W.*, 218 Wis. 2d at 58 n.6 (emphasis added). The circuit court must, then, consider

[4] The State uses the pagination assigned by e-filing, rather than C.T.P.-B.'s.

how serious the facts of the case are in order to exercise its discretion properly.

C.T.P.-B. claims that the circuit court did not apply the correct standard of law, arguing that the court misread *Verhagen*. (C.T.P.-B.'s Br. 36–37.) C.T.P.-B. is incorrect. The circuit court stated that *Verhagen* "noted that it is the 'unusual situation' where the juvenile is able to prove that transfer of jurisdiction to juvenile court is appropriate." (R. 92:16 (citing *Verhagen*, 198 Wis. 2d at 188).) C.T.P.-B. attempts to distinguish the "unusual situation" of a juvenile being reverse waived and a juvenile proving reverse waiver. (C.T.P.-B.'s Br. 37.) This is a distinction without a difference. *Verhagen* held that there is statutory preference for minors charged with original jurisdiction crimes remaining in criminal court, and the minors therefore bore the burden to prove all of the criteria for reverse waiver. *Verhagen*, 198 Wis. 2d at 187–90. If it is the minor's burden to prove reverse waiver, and reverse waiver is presumed to be the "unusual" outcome, then it logically means that proving reverse waiver will also be unusual. *Id.*

Further, C.T.P.-B. claims that the circuit court did not use a demonstrated rational process to deny waiver. (C.T.P.-B.'s Br. 35–36.) C.T.P.-B. claims that the court made conclusory findings of fact but did not explain "how or why reverse waiver would depreciate the seriousness of the offense." (C.T.P.-B.'s Br. 35.) C.T.P.-B. fails to recognize the undisputed, and largely admitted, findings about his conduct. (R. 92:18–19.) He also fails to recognize, and therefore fails to dispute, that the circuit court made findings that C.T.P.-B.'s conduct was "violent and egregious in nature," "vicious[ ] and . . . brutal[ ]," and "clearly premeditated." (R. 92:20.) It also fails to recognize that the court found that the maximum possible punishment under the juvenile system was insufficient—that the ten-year disposition would depreciate the seriousness of the offense. (R. 92:20.) In *Verhagen*, this

Court found that Verhagen committed "a vicious major attack" was enough to sustain a conclusion that "transferring jurisdiction to the juvenile court would depreciate the seriousness of the offense." *Verhagen*, 198 Wis. 2d at 193. The circuit court made similar findings here; this Court should affirm.

C.T.P.-B. argues essentially de novo that reverse waiver would not depreciate the seriousness of the offense. (C.T.P.-B.'s Br. 29–33.) C.T.P.-B. argues that the circuit court failed to consider how the testimony on all of the criteria overlaps. (C.T.P.-B.'s Br. 30–32, 34.) He cites no authorities to support his argument; it is therefore undeveloped and this Court need not consider it. *State v. Pettit*, 171 Wis. 2d 627, 646–47, 492 N.W.2d 633 (Ct. App. 1992) (noting this Court does not consider undeveloped arguments unsupported by legal authority). C.T.P.-B. has no authorities for his central belief that the circuit court was required to consider his evidence as to the other criteria because this Court has already stated the opposite: "[i]f 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." *Kleser*, 328 Wis. 2d 42, ¶ 97.

C.T.P.-B. points out how his experts testified about all three criteria. (C.T.P.-B.'s Br. 34.) The circuit court accepted their testimony on the adequacy of care and deterrence, so he argues that "[i]t is inherently inconsistent for the [c]ircuit [c]ourt to accept the [expert] testimony on some, but not all, of the factors." (C.T.P.-B.'s Br. 34.) This argument is legally unsupported. More importantly, the circuit court, as finder of fact, is allowed to make inconsistent credibility and weight determinations. "The trial court is the sole arbiter of credibility issues and will be sustained if facts in the record support the court's conclusions." *State v. Sloan*, 2007 WI App 146, ¶ 21, 303 Wis. 2d 438, 736 N.W.2d 189. Furthermore, "a trial court may reject an expert's opinion even if it is

uncontradicted." *Bray v. Gateway Ins. Co.*, 2010 WI App 22, ¶ 24, 323 Wis. 2d 421, 779 N.W.2d 695. The trial court was under no obligation to accept all of C.T.P.-B.'s experts' testimony as persuasive on all three criteria, and even meeting his burden on two factors does not mean the court had to accept his experts as persuasive, relevant, or even competent to testify on the third criterion. *Kleser*, 328 Wis. 2d 42, ¶ 97.

C.T.P.-B. argues that waiving him to juvenile court "would address the seriousness of the offense in a way that retaining jurisdiction in adult court would not by ensuring that C.T.P.-B. will receive treatment." (C.T.P.-B.'s Br. 33.) Again, the adequacy of treatment is its own factor and a court is not required to consider the adequacy of treatment when considering either other factor. *Kleser*, 328 Wis. 2d 42, ¶ 97.

Finally, C.T.P.-B. claims, without legal authority or record cites, that retaining adult jurisdiction would only serve retribution. (C.T.P.-B.'s Br. 26–28.) Without a record citation, this is merely his opinion, and without a legal citation for why this matters, this argument is undeveloped, and this Court should not address it. *Pettit*, 171 Wis. 2d at 646–47.

* * * * *

Because the circuit court found C.T.P.-B.'s conduct egregious, vicious, and brutal, it found that C.T.P.-B. did not meet his burden to show that transferring jurisdiction to the juvenile justice system would not depreciate the seriousness of the offense. It identified the relevant facts, reached reasonable inferences from those facts, identified the correct standard of law, and reached a reasonable conclusion. This Court should therefore find that the circuit court reached a reasonable conclusion and did not erroneously exercise its discretion.

CONCLUSION

This Court should affirm.

Dated this 7th day of June 2024.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 5,384 words.

Dated this 7th day of June 2024.

Electronically signed by:

John D. Flynn
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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 7th day of June 2024.

Electronically signed by:

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