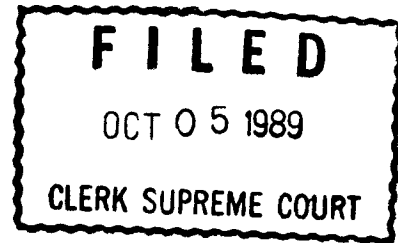


IN THE COURT OF APPEALS OF IOWA

No. 9-154 / 88-474



STATE OF IOWA,

Plaintiff-Appellee,

vs.

JAMES STEVEN CORDER,

Defendant-Appellant.

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Appeal from the Iowa District Court for Jackson County,
David J. Sohr, J. L. Burns, and A. J. Van Zee, Judges.

Defendant appeals from his convictions, following a
jury trial, for first-degree murder and second-degree
arson. **AFFIRMED.**

Mark R. Lawson of Peckosh & Lawson, Maquoketa, for
defendant-appellant.

Thomas J. Miller, Attorney General, and Ann E. Brenden
and James Kivi, Assistant Attorneys General, for
plaintiff-appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

HABHAB, J. 618

Defendant James Corder appeals from his conviction, following a jury trial, of first-degree murder and second-degree arson. We affirm.

James Corder, sixteen years old at the time, was accused of killing his stepmother and setting the family home on fire. Initially a petition alleging delinquency was filed in juvenile court. However, the juvenile court waived its jurisdiction, allowing Corder's prosecution as an adult. Corder was then charged with first-degree murder and second-degree arson.

Several of Corder's issues challenge the juvenile court's waiver of its jurisdiction, allowing his prosecution as an adult. Corder contends the juvenile court's waiver of jurisdiction was not supported by the evidence presented at the waiver hearing; he challenges the sufficiency of the evidence to establish either (1) probable cause to believe he had committed delinquent acts which would constitute public offenses, or (2) the inadequacy of rehabilitation services available to the juvenile court. In addition, Corder contends the juvenile court erred by refusing to continue the waiver hearing so he could obtain a psychological evaluation. Corder also contends the juvenile court denied him due process and the right to confront witnesses by finding probable cause on the basis of the State's complaint and affidavit, without hearing any witnesses.

In addition to his issues concerning waiver of juvenile court jurisdiction, Corder also contends he was denied his right to speedy indictment. This issue arises as follows: On May 4, 1987, the juvenile court entered an order waiving its jurisdiction, thereby triggering the forty-five day speedy indictment period of Iowa Rule of Criminal Procedure 27(2)(a). On May 13, Corder attempted an interlocutory appeal from the juvenile court's waiver order. On the same day, he asked the Iowa Supreme Court to stay further proceedings in the criminal prosecution until the appeal was resolved. On June 15, the Iowa Supreme Court denied the request for a stay. On June 18, the forty-five day period from the May 4 waiver order expired. On June 26, fifty-three days after the May 4 waiver order, a trial information was filed. Corder contends this sequence of events denied his right to speedy indictment. The State responds that Corder's attempt to appeal the waiver order constituted good cause for the delay.

In addition to these issues, Corder contends the district court erred by giving an "impeachment instruction" concerning the testimony of one of his witnesses. He argues the alleged impeachment of this witness concerned a merely collateral matter which was not material to any issue in the trial. Finally, Corder contends the district court abused its sentencing discretion by refusing to grant him probation and a deferred judgment pursuant to Iowa Code section 232.8(3). That statute provides that when a

juvenile has been convicted for a crime as an adult, the sentencing court may impose a deferred judgment and probation even if those sentencing options would be unavailable for an adult convicted of the same crime.

I.

The first issue we take up is defendant's claim that he was denied his right to speedy indictment pursuant to Iowa Rule of Criminal Procedure 27(2)(a). Rule 27(2)(a) provides:

When an adult is arrested for the commission of a public offense; or, in the case of a child, when the juvenile court enters an order waiving jurisdiction pursuant to section 232.45, The Code, and an indictment is not found against him within forty-five days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives his right thereto.

At the trial court level, the burden falls upon the State to show waiver or good cause. See State v. Hunziker, 311 N.W.2d 692, 694 (Iowa 1981). Appellate review of the trial court's determination of good cause is not de novo. Our review is at law; we are bound by findings of fact supported by substantial evidence. State v. Beeks, 428 N.W.2d 307, 308 (Iowa App. 1988). We find no abuse of discretion on the part of the trial court in its finding of good cause.

Defendant's filing of a motion to stay the order waiving jurisdiction and enjoin prosecution of the matter with the Iowa Supreme Court constitutes good cause on the part of the State in not proceeding with the case. While

the State could have ignored the motion to stay and proceeded with the case at full speed, it does the State little good to press forward while the motion to stay hangs like the sword of Damocles over its head. Furthermore, in not proceeding with the case while the motion to stay was pending, the State was implicitly acquiescing to the defendant's desire that the case not proceed in the district court. We find no error here.

II.

Defendant's second claim is that the juvenile court abused its discretion in waiving its jurisdiction over him to the district court. First, defendant asserts the juvenile court erred in overruling his motion to continue the waiver hearing. Defendant had sought a continuance of the waiver hearing for the purposes of obtaining discovery and a psychological evaluation. A trial court has considerable discretion in ruling upon a motion for continuance and will be reversed only where an abuse is demonstrated. See State v. Slayton, 417 N.W.2d 432, 435 (Iowa 1987); State v. Ware, 338 N.W.2d 707, 714 (Iowa 1983). We find no such abuse of discretion here.

Iowa Code section 232.45 (1987) requires that an investigation be performed prior to the waiver hearing. There is no requirement that a psychological study be part of that investigation.¹ The juvenile court properly

1. Indeed, a court may order such an examination at that stage in the proceedings only if the requirements set forth in Iowa Code section 232.49(3) have been met.

exercised its discretion here. Defendant did not allege that he was currently suffering from some mental defect or disorder which affected his competency, nor did he allege that he was suffering from such defect or disorder at the time of the crime. Absent such circumstances, we find no abuse of discretion. See Interest of T.M.J., 110 Wis.2d 7, 327 N.W.2d 198, 205 (Wis. Ct. App. 1982).

Defendant's second reason for the continuance was so that he could conduct discovery. Iowa Rule of Juvenile Procedure 1.2(b) provides:

Although informal discovery methods are preferred, upon good cause shown, depositions and interrogatories by any party may be permitted by the court in delinquency proceedings except where they conflict with these rules or with statutes. Ordinarily, however, depositions and interrogatories shall not be permitted for issues arising under Iowa Code section 232.45(6)(b) after filing of a motion to waive jurisdiction.

Under this rule, discovery is limited, especially after a motion to waive jurisdiction has been filed. One must bear in mind that a waiver hearing is not an adjudicatory trial where the guilt or innocence of the accused is determined. Rather, waiver hearings are confined to two principal issues: whether there is probable cause to believe the child has committed the delinquent act, and whether the juvenile court should waive its jurisdiction over the child. Cf. In re Interest of G.B.K., 126 Wis.2d 253, 376 N.W.2d 384, 390 (1985). Here, defendant failed to make the requisite showing of "good cause" for discovery. Absent

such a showing, there was no reason for the juvenile court to grant a continuance.

Defendant further asserts that his constitutional right to confrontation and due process was violated by the juvenile court's reliance on non-testimonial evidence. At the waiver hearing, the State introduced, over defendant's objections, a copy of the complaint and affidavit as evidence of probable cause. As the United States Supreme Court noted in Breed v. Jones, 421 U.S. 519, 537-38, 95 S. Ct. 1779, 1789-90, 44 L. Ed. 2d 346, 360 (1975), "the Court has never attempted to prescribe criteria for, or the nature and quantum of evidence that must support, a decision to transfer a juvenile for trial in adult court," the only requirements being that the waiver hearings "measure up to the essentials of due process and fair treatment." Kent v. United States, 383 U.S. 541, 562, 86 S. Ct. 1045, 1057, 16 L. Ed. 84, 98 (1966).

We do not read Kent nor Breed to require the application of the right of confrontation to waiver proceedings. See Matter of Welfare of T.D.S., 289 N.W.2d 137, 140 (Minn. 1980). The waiver proceedings, while quite pivotal for the juvenile, do not result in an adjudication of guilt, but only a determination of whether jurisdiction over the juvenile will be retained. As such, the full panoply of trial rights is inapplicable to waiver proceedings. See id. at 141.

Defendant next argues that the juvenile court erred in waiving its jurisdiction over defendant because of a lack of evidence regarding the programs, facilities, and personnel available in the event defendant was convicted in district court. Our review is de novo to the extent of examining all the evidence to determine whether the court abused that discretion in ordering the waiver. State v. Greiman, 344 N.W.2d 249, 251 (Iowa 1984).

Iowa Code section 232.45(6), which delineates the criteria which must be met in order for the juvenile court to waive jurisdiction, provides:

At the conclusion of the waiver hearing the court may waive its jurisdiction over the child for the alleged commission of the public offense if all of the following apply:

a. The child is fourteen years of age or older.

b. The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute the public offense.

c. The court determines that the State has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child and the child is adjudicated to have committed the delinquent act, and that waiver of the court's jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community.

Iowa Code section 232.45(7) instructs:

In making the determination required by subsection 6, paragraph "c," the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities to treat and rehabilitate the child and the response to such efforts.

c. The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

Juvenile court officer Brian Bopes testified as to the available programs, facilities, and personnel in the juvenile system. He also testified that the same types of services were available in the adult corrections system. We find that such testimony meets the requirements of section 232.45(7)(c). We do not read section 232.45(7)(c) to require that the State present detailed evidence as to all the various programs provided in the adult corrections system. Rather, the State need only produce such evidence which permits the juvenile court to weigh the respective prospects of rehabilitation offered by each system. Cf. Greiman, 344 N.W.2d 251.

Along the same lines, defendant asserts that the evidence presented at the waiver hearing was insufficient to justify the juvenile court's waiver of jurisdiction. We find no abuse of discretion on the part of the juvenile court in waiving jurisdiction in this matter. The juvenile court was presented with evidence by which it could find

probable cause to believe that defendant had committed the heinous murder of his stepmother. Defendant was sixteen years old; thereby leaving only twenty-two months in which rehabilitation could be attempted in the juvenile system. Finally, the juvenile court officer recommended transfer based on the seriousness of the crimes and defendant's need for counseling and rehabilitation beyond the twenty-two-month period available in the juvenile system. The juvenile court officer's opinion is entitled to considerable weight. See id. From this record, we find no abuse of discretion by the juvenile court in waiving its jurisdiction over defendant.

III.

Defendant next asserts that the trial court erred in giving an impeachment instruction in connection with defense witness Michele Heister. Defendant called Michele Heister as a witness. She testified that on the night of the murder, Linda LaSasso came into the convenience store where she worked at approximately 10:30 p.m. Ms. Heister further testified that LaSasso was wearing dress slacks when she came into the store. Defendant's defense at trial was that Linda LaSasso had killed the victim. Ms. LaSasso testified that she had arrived home from a meeting between 9:30 and 9:45 p.m. The State called Heister's employer as a rebuttal witness. He testified that a few days after the murder Heister told him LaSasso had been wearing jeans when

she came into the store on the night in question. Based on this discrepancy, the trial court gave Instruction 12, an impeachment instruction.

We find defendant waived error on this claim by not lodging a proper objection to the rebuttal testimony of Heister's employer. In State v. Johnson, 223 N.W.2d 226, 228-29 (Iowa 1974), the Iowa Supreme Court held that where a defendant fails to lodge a proper objection to rebuttal testimony, that testimony may form the basis for an impeachment instruction. Here, since defendant did not lodge a proper objection to the testimony of Heister's employer, that testimony was available for impeachment purposes. See id.

IV.

Finally, defendant claims that the trial court abused its discretion in refusing to grant him a deferred judgment pursuant to Iowa Code section 232.8(3). We find defendant's argument on this point to be meritless. The trial court recognized its authority to grant defendant a deferred judgment, but choose not to do so based on the seriousness of the offense. See Greiman, 344 N.W.2d at 253. We find no abuse of discretion on the trial court.

AFFIRMED.