

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY  
CRIMINAL DIVISION

STATE OF WISCONSIN,

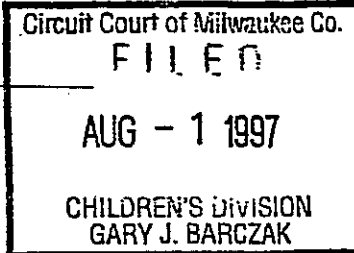
Plaintiff, **RECEIVED** Case No. F-971246

vs.

[AUG 1 1997]

LATOSHA ARMSTEAD,

Defendant. Office Of District Attorney  
Milwaukee, Wisconsin 53233



WHAT ARE THE RULES FOR A REVERSE WAIVER?  
(DAY 4 PAGE 109)

Latosha Armstead, by her attorneys, hereby moves this court to dismiss the charge of first-degree intentional homicide and enter an order finding that Wis. Stat. Sec's. 938.183 and 970.032 are unconstitutional as they violate the defendant's right to equal protection, due process of laws, effective assistance of counsel and violate her right to be free from cruel and unusual punishment under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under Article 1, sections one, six, seven and eight of the Wisconsin Constitution.

Attorneys for Latosha Armstead spent hundreds of hours attempting to figure out what if any material should be

presented at the reverse waiver hearing held by this court in the above-captioned case. The statute provides no direction with respect to what if anything the court should do with the evidence presented at the reverse waiver. The court, instead of finding the statute unconstitutional at the outset of the hearing, weighed in with its request for guidance after the conclusion of the hearing on a variety of areas for which the court had concerns. The following arguments address the court's concerns and articulate the defense position regarding that particular issue.

**A. How should the court utilize Psychological Testimony?**

The court stated:

"As to the testimony with regard to psychological — we'll call it psychological human development evidence, we certainly had a lot of that. . . . I want both the lawyers to address the court in their argument as to what weight should be given to that and how it should be applied to the three criterion."  
(Day 4 page 106)

Counsel argued prior to the hearing in writing that we did not know who to call as experts and what questions to ask them because the statute was unconstitutional and provided no notice as to what the court would do with the evidence. One member of the defense team considered asking a para-psychologist to testify as to the effect a decision in favor of the defendant

would have on the issue of deterring violent behavior in children. The defense team decided that in deference to the Judeo-Christian sources of our laws - we would opt for a priest instead. Perhaps counsel should have subpoenaed the governor since there is no recorded legislative debate and there is no case law on this very new statute.

**B. What type of hearing is this?**

Not knowing what witnesses to call was problematic enough, but not knowing what to ask the witnesses we decided to call, began to give counsel that twilight zone feeling. Was this a preliminary hearing where the rules of evidence would apply or a waiver hearing where they wouldn't apply? We thought it was important and argued that rules of evidence did not apply because the closest animal to this hearing was a traditional waiver hearing. At a traditional waiver hearing social workers and others are permitted to testify as to what they believe to be true about a client's social history. In the event that it is a preliminary hearing, then the above referenced testimony has the potential of being seriously limited and worse allows the court to assign little or no weight to summary evidence regarding a clients education, lifestyle, intelligence and other related issues. The district attorney argued it was merely an

expanded preliminary hearing and that the rules of evidence should apply. However, since no one had the answer as to what type of hearing it was, the court had free reign to do what it pleased with what it has heard. Finally, an accommodation was made, the parties agreed to disagree on whether this was one hearing or two and whether or not the rules of evidence apply. The court had slightly different view as to the significance of the dilemma of whether rules of evidence applied. After the hearing was over and the witnesses had gone home the court sought the participants guidance on this issue, but diminished its significance.

A **minor issue** is the rules for these hearing. You know, the statute says this is a hearing. What evidentiary rules should be applicable... I was persuaded that I had no authority—maybe I was wrong, I'm not sure. . . (Day 4 page 108) (emphasis added)

At the conclusion of the testimony, the court, to the audible gasps of defense counsel, requested the assembled group to educate him regarding this new statute. In essence, we had a multi-day hearing, wherein the constitutionality of the statute was challenged on notice grounds, and the judge admitted at the conclusion of the evidence that he didn't know what if anything the court should have been doing during the hearing and further what he should do after the hearing. The prosecution and the defense have been asked to educate the court now that the

hearing is over.

We respectfully decline.

Among the four lawyers working for Latosha Armstead we have litigated approximately 60 homicides many of them involving issues of juvenile transfer and never has a court said after 673 pages of an evidentiary hearing: "[a]nd thirdly, what are the rules for a reverse waiver?" If the court doesn't know, how can a defendant possibly receive a fair hearing under the Due Process clause of the United States Constitution or the Wisconsin Constitution? Maybe the court was simply seeking the retrospective collective wisdom of experienced litigators.

It seems unlikely.

### C. What happens next?

Counsel has no idea as to what is going to happen next. The court appears to be somewhat concerned about that as well. The court said:

I think there has been some confusion over what the picture looks like in the event that this juvenile would be adjudicated as an adult. I need a clear-cut picture as to what that is. (Day 4, page 105 emphasis added).

The court is concerned about this issue because it has an obligation regarding the fair and just administration of the laws. The defendant's needs are less global but equally as important as she may go to the penitentiary for the rest of her

life. Her counsel is unable to advise her regarding any future decisions, because we simply do not know. The legislation is so barren as to be vague.

If she pleads to a lesser offense, as an adult, such as first degree reckless homicide, does she get another chance to go back to juvenile court? Does it matter if she plead guilty to a lesser offense or must it be a finding by a jury? It would appear that counsel and the court are not the only confused persons as there is a new bill pending which modifies the current bill and provides for the abolition of reverse waiver for persons between the ages of 10 to 15 years old. This proposed bill is sponsored by 30 members of the legislature. (See attached). The case at bar is the first case where these issues have arisen. Did the legislators just change their mind? If the answer to that question is yes, then what have we missed? It is not as though there have been dozens of these hearing held statewide and an out cry has been sent to the capital that the procedure is too expensive or cumbersome? Counsel for the juvenile has been silently weeping in the dark, feeling inept and ineffective because the statute is silent on the application of three incredibly vicious and mean spirited mandatory conclusive presumptions, while, at least some legislatures have decided to scrap the statute in favor of something different.

D. Can the defendant appeal if the court rules adversely? If so, when and how many judges will hear it?

If Latosha loses and the court find this statute constitutional, what do we do? The statute is silent with respect to appeal. If we are allowed to appeal, how many judges will hear the case one or three? Is this a juvenile appeal or an adult appeal? Can she appeal now, as if this were a waiver hearing under the old statute Wis. Stat. 48.18; or must we wait until the conclusion of the case?

E. If we can't appeal now, should she go to trial?

What would happen if she were convicted in the adult court of a lesser offense? Can she have a chance for a juvenile disposition? Does a defendant waive that if the conviction is based on a plea? Is this her only chance to get back to the juvenile system? What rational reason could there be for treating a 13-year-old convicted of a lesser included offense more harshly than a 15 year old convicted of the same offense by not giving them the equal opportunity to go back to the juvenile system after a full airing of the evidence?

Latosha has an absolute right to know the rules of the match before the bell rings. The bell has rung and we still

don't know the rules. This court had the integrity, righteousness, and guts to admit like the rest of us, it was clueless as to this particular statute, when in exasperation at the end of the hearing the court said, "What are the rules for a reverse waiver?" That takes guts and the defendant is very grateful.

F. "I know the rules."  
"No, I know the rules."  
"Whose got the book?"  
"What do you mean they are not in the book?"

Everybody will, in their arguments and briefs, weigh in with what they think the rules should be, but the citizens of the state of Wisconsin have not elected E. Michael McCann, members of the defense team, or the this court, to make laws -- for that we have a legislature.

Help.

G. Was it a good day for a banana Fish?

In Conclusion, the court opined, "So I think we have a good clear road map for the future cases like this." (Day 4, page 107) With all due respect, if this is the road map, Latosha Armstead opts for roller skates on familiar sidewalks.