

IN THE IOWA DISTRICT COURT FOR BOONE COUNTY

State of Iowa,

Plaintiff,

v.

Clayton Tullis,

Defendant.

Case No. FECR 110284

ORDER RE: MOTION  
TO TRANSFER  
JURISDICTION

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On February 15, 2016, the Court held a hearing to consider a motion filed by the Defendant Clayton Tullis to transfer jurisdiction of the criminal prosecution pending against him in this case to Juvenile Court. The Defendant appeared personally and with his attorney John Flynn. The State of Iowa was represented by Boone County Attorney Daniel Kolacia. The Court heard testimony from Art Konar, PhD; Juvenile Court Officer Emilea Lundberg; Sean Crawford, the associate warden at the Mount Pleasant prison; and Michael Klobnak, probation/parole officer from the Department of Correctional Services. By agreement of the parties, the Court accepted Defendant's Exhibit A, a reverse waiver report and the report of Dr. Konar, into evidence. By agreement of the parties, the Court also took notice of the Minutes of Testimony relating to John Mayse, Detective, Boone Police Department. After reviewing the file, reflecting on the record, and considering the applicable law, the Court is prepared to rule on the motion.

***Procedural Background***

On December 16, 2015, the State filed its Trial Information charging Defendant with the crimes of Sexual Abuse in the Second Degree (Count I), a Class B felony, in violation of Iowa Code Sections 709.1, 709.3(1)(b), and 903B.1 of the Iowa Code; and Invasion of Privacy (Counts II and III), serious misdemeanors, in violation of Iowa Code

Section 709.21(1) and 903B.2 of the Iowa Code. Defendant filed a Written Arraignment and Plea of Not Guilty on December 21, 2015. Counts II and III were subsequently dismissed by the Court in an order entered February 10, 2016. On December 16, 2015, Defendant filed a Motion to Transfer Case to Juvenile Court pursuant to Iowa Code Section 803.6. The State filed a Resistance to Defendant's request.

### ***Conclusions of Law and Analysis***

Under the reverse waiver statute, an individual age sixteen or older charged with committing a forcible felony is subject to the jurisdiction of the adult courts rather than the juvenile system. Iowa Code § 232.8(1)(c). The district court may, however, transfer jurisdiction over the child and the charges to the juvenile court upon a finding of good cause pursuant to §803.6. *Id.* The juvenile bears the burden to show good cause for a reverse waiver. *State v. Terry*, 569 N.W.2d 364, 366 (Iowa 1997). A reverse waiver is granted only if the district court concludes that prosecuting the offense in "the criminal court would be inappropriate under the criteria set forth in section 232.45(6)(c) and (8)." Iowa Code § 803.6(3). *Langley v. State*, 842 N.W.2d 680 (Iowa Ct. App. 2013).

Iowa Code section 232.45(6)(c) and (8) provide:

(6)(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.

....

(8) 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, including past efforts of such 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.

*Langley v. State*, 842 N.W.2d 680 (Iowa Ct. App. 2013).

**THE NATURE OF THE ALLEGED DELINQUENT ACT AND THE CIRCUMSTANCES UNDER WHICH IT WAS COMMITTED.**

Defendant is charged Sexual Abuse in the Second Degree (Count I), a Class B felony, in violation of Iowa Code Sections 709.1, 709.3(1)(b), and 903B.1 of the Iowa Code. The conduct for which the Defendant faces prosecution in this case allegedly took place on or about August 12, 2015, when the Defendant was 16 years of age. Defendant's birth date is June 29, 1999. Defendant is alleged to have touched privates and buttocks of a 5 year old alleged victim and looked at her privates with his phone. These alleged actions took place at Defendant's home where Defendant's mother was providing daycare services for the alleged victim. The nature of the alleged actions and circumstances are serious and disturbing. There is probable cause to believe that Defendant committed the offense. This factor weighs in favor of keeping this case in adult court.

**THE NATURE AND EXTENT OF THE CHILD'S PRIOR CONTACTS WITH JUVENILE AUTHORITIES, INCLUDING PAST EFFORTS OF SUCH AUTHORITIES TO TREAT AND REHABILITATE THE CHILD AND THE RESPONSE TO SUCH EFFORTS.**

The Defendant has had no prior criminal history; no prior Juvenile Court contacts or interventions; no prior drug and alcohol treatment and no prior rehabilitation efforts through the Juvenile Court system or otherwise. The record in this regard is undisputed. This factor weighs strongly in favor of transferring this case to the Juvenile Court.

**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.**

If jurisdiction over the pending charge is transferred to the Juvenile Court, any supervision or treatment of the Defendant and any restrictions on his conduct or activities that the Juvenile Court might impose could be imposed until he is 19½ years old. The reverse waiver report filed by Juvenile Court Officer Lundberg outlines a variety of treatment options available to the Defendant, including, but not limited to,

1. Probation under a Consent Decree or Adjudication.
2. Rehabilitation Services such as individual and family counseling; skill development: substance abuse evaluation, education and treatment; mental health evaluation and treatment until the age of 19½.
3. Graduated Sanction Services (Tracking, Day Treatment, School Liaisons) remain available to individuals up to 18 months past the date of dispositional order provided the order is entered subsequent to the 17<sup>th</sup> and before the 18<sup>th</sup> birthday and:
  - a. The individual is adjudicated delinquent and under the jurisdiction of Juvenile Court Services; or
  - b. the individual voluntarily accepts services when being released from the State Training School, Boot Camp or group care and services are extended by the Chief Juvenile Court Officer or DHS Regional Administrator.
4. Independent Living remains open to individuals under age 20 provided placement takes place before the 18<sup>th</sup> birthday and continuation in independent living is for the purpose of completion of a course of study leading to a diploma or GED
5. Foster Group Care is legally available, but technically not, because no facilities in Iowa will take delinquents past the age of 18 due to liability. Placement would also require the approval of the Regional DHS Administrator.
6. State Training Schools are available beyond the 18<sup>th</sup> birthday provided the initial placement takes place before the 18<sup>th</sup> birthday.

A child placed in the STS subsequent to age 17 and prior to age 18 can remain beyond 18 provided the STS makes application to and receives permission from the committing Court. The extension must be for the purpose of completion of a course of study and cannot extend for more than 18 months beyond date of disposition.

Juvenile Court Officer Lundberg discussed these and other available options, including inpatient treatment programming, for the Defendant.

Dr. Arthur Konar, PhD, credibly testified concerning his psychological evaluation of the Defendant. He discussed his administration of the MMPI-A and WISC-IV tests, their internal validity scores and indicating the testing was valid. Dr. Konar strongly recommends the Defendant's case be transferred to Juvenile Court based on a variety of reasons, including, but not limited to, his lack of contact in prior Juvenile Court proceedings; his opinion that there is a very low probability of sexual acting out by the Defendant; the absence of a substance abuse disorder; the absence of a conduct disorder; the absence of oppositional defiant disorder; and the absence of attention deficit hyperactivity disorder. Although Defendant's IQ was in the "normal" range (FS 109), his output processing skills were quite weak. He also showed elevated scores in awkwardness, avoidance and social introversion. Dr. Konar opined that the Defendant would be capable of therapeutic learning to be rehabilitated in Juvenile Court system within the time frames established under the law. Konar described the Defendant as "16 going on 12", again noting his social immaturity; awkwardness; and shy and introverted personality. He further indicated that a prison sentence and incarceration would have very little therapeutic benefit to the Defendant other than punishing him and would likely overwhelm him and hamper his ability for therapeutic treatment.

Juvenile Court Officer Lundberg's testimony echoed Dr. Konar's opinion in some respects indicating that the Defendant would likely become a victim if placed in the adult

criminal system and even in some juvenile programs designed for treating more sophisticated juveniles. She credibly testified as to her reasons and rationale for recommending Defendant's transfer to Juvenile Court. She indicated that, if the Defendant were found guilty in the Juvenile Court system, she would likely recommend he participate in an inpatient treatment program for offenders similar to that at the Four Oaks program in Cedar Rapids. She indicated that this program would be more geared towards social teaching and development and would more closely fit with the Defendant's treatment needs.

The Court also heard testimony from the associate warden for the Mt. Pleasant prison, Sean Crawford. Crawford testified concerning the sex offender treatment program at Mt. Pleasant, which he has supervised since 2013. He likewise testified credibly. He described the treatment program. He also testified that the program would not be available to the Defendant until he was 18 years old and, if he were sentenced to prison, he would probably not be placed in the program until anywhere from one to three years prior to his scheduled discharge date. He did not comment on any other treatment or rehabilitation programs, facilities or personnel which might be available to Defendant in the adult prison system.

Officer Michael Klobnak, a Probation/Parole Officer 3 for the Department of Correctional Services, testified that supervisory probationary services could be provided to the Defendant through the department in the adult system. These services would include a psychosexual evaluation; GPS monitoring; polygraph testing; a risk and need assessment as well as a variety of standardized tests with internal validity scales. Klobnak testified that the department would not be able to provide any direct treatment services for the Defendant until he reached the age of 18 and would likely have to refer

any such treatment services out to other agencies, if the Defendant were placed in the adult probation system. His testimony was also credible.

The record presented concerning this factor also weighs strongly in favor of transferring this case to the Juvenile Court. The programs, facilities and personnel available for rehabilitation and treatment of the Defendant in Juvenile Court appear much better suited to meet Defendant's his rehabilitation and treatment needs.

Based upon the record presented, the Court FINDS there is good cause to transfer this case to the juvenile court. Defendant has met his burden in this regard.

The Court FINDS that prosecuting the offense in the criminal court would be inappropriate based upon application of the criteria set forth in Section 232.45(6)(c) and (8).

The Court FINDS that there are reasonable prospects that Defendant could be rehabilitated if jurisdiction of the prosecution against him was transferred to the Juvenile Court and that, based thereon, said transfer is in the best interest of the Defendant and the community.

IT IS, THEREFORE, ORDERED that the Motion to Transfer Jurisdiction to the Juvenile Court filed by the Defendant is hereby granted.

IT IS FURTHER ORDERED that jurisdiction of this matter shall be transferred back to the Juvenile Court pursuant to Iowa Code Section 803.6(4), and the clerk of court is hereby directed to forward this transfer order, together with all papers, documents, and the transcript of all testimony filed or admitted into evidence in connection with this case, to the clerk of court of the Juvenile Court in the same manner as provided in Iowa Code Section 232.8(2).

Copies to: Counsel of Record and Court Administration.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number**      **Case Title**  
FECR110284      ST V CLAYTON WAYNE TULLIS

So Ordered



John J. Haney, District Court Judge,  
Second Judicial District of Iowa