

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: No. 98-10,621
	:
	:
vs.	: CRIMINAL
	:
SCOTT MORGRET,	: Petition for Transfer
Defendant	: to Juvenile Court

OPINION AND ORDER

This matter came before the Court on the defendant's Petition for Transfer to Juvenile Court contained within his Omnibus Pre-Trial Motion. A hearing was held on this Petition on February 1, 1999. The defendant presented the testimony of Dr. John W. Kelsey, who is a licensed clinical psychologist, two juvenile probation officers, and a supervised bail officer. The Commonwealth did not present any witnesses. After reviewing the evidence presented and considering the arguments of both counsel, the Court makes the following findings of fact and conclusions of law.

Findings of Fact

1. The defendant is seventeen (17) years old. His date of birth is February 21, 1981.
2. The defendant is charged with criminal homicide, aggravated assault (attempt/cause serious bodily injury), aggravated assault (with a deadly weapon), simple assault (attempt/cause bodily injury), simple assault (with a deadly weapon), and recklessly endangering another, all of which arise out of the shooting death of Joseph Defeo.
3. The shooting was not planned or premeditated.
4. The Commonwealth concedes the shooting was unintentional and it is not seeking a conviction for murder in the first or second degree.

5. The nature and circumstances of the offense as presented at the preliminary hearing are as follows: During the evening hours of April 3 and the early morning hours of April 4, 1998, the defendant was at the residence of Joseph Mancini, along with the victim (Joseph Defeo) and a female. Mancini was drinking beer and the other individuals were drinking Schnapps. At approximately 4:00 a.m., Mancini, the victim and the defendant went upstairs to Mancini's bedroom because the victim wanted to look at Mancini's guns. The victim and Mancini were standing side by side in front of a dresser and the defendant was laying on the bed. The victim was examining a Browning nine (9) millimeter pistol and the defendant had a .22 caliber semiautomatic handgun. The defendant began "dry firing" the .22 caliber handgun. Mancini described the dry firing as the defendant drawing the slide back and pulling the trigger probably two or three times without the gun being discharged. Initially, Mancini heard the dry firing and then turned around to observe the defendant. At that time, the weapon was pointed in a 'safe direction' toward the end of the bed/the defendant's feet. Mancini turned around to resume talking to the victim and under a minute later a shot rang out and the victim fell to the ground. The defendant went to the victim. He was hysterical and saying things like wake up and don't go to sleep. Mancini went to call 911. The victim died as a result of a gunshot wound to the back of the head.

6. The defendant's intelligence quotient (IQ) of 87 is at the low end of the average range.

7. The defendant is impulsive and immature for his age.

8. The defendant does not own the weapon involved in the shooting.

9. The defendant has a juvenile adjudication for disorderly conduct. This is his only previous contact with the juvenile or criminal system.

10. The defendant was placed on supervision for the disorderly conduct adjudication one (1) to two(2) weeks prior to this shooting incident.

11. The defendant has been cooperative while on supervision. He has tested negative for drugs and alcohol and generally kept his scheduled appointments. He has not yet paid his fines and costs.

12. The defendant has been diagnosed with Adjustment Disorder with Mixed Disturbance of Mood and Behavior and Parent Child Conflict.

13. He also has gender identity and sexual orientation issues which have been described as "female in male body."

14. He suffers from depression and has had some suicidal ideation but without plan or time line.

15. There is a risk of suicide and/or victimization of the defendant in the adult criminal system.

16. The defendant is not psychotic, nor does he suffer from delusions or oddities.

17. The defendant can remain in the juvenile system for approximately three (3) years, i.e., until he reaches age 21.

18. In the juvenile system, more and better programs are available to address the defendant's social, educational, characterological, and psychological difficulties.

19. Dr. Kelsey and the Juvenile Probation Officers, Matthew Brennan and Michael Armbruster, testified that the defendant is amenable to treatment and that it is likely the juvenile system could treat his problems within the next three (3) years. The Court finds this testimony credible.

Conclusions of Law

1. The defendant is not a significant threat to the safety of the community.
2. The defendant is amenable to treatment.
3. There will not be a substantial adverse impact on the community if the defendant is transferred to Juvenile Court.
4. The defendant has not exhibited criminal sophistication.
5. The defendant has proved by a preponderance of the evidence that the transfer to Juvenile Court will serve the public interest.

Discussion

In order for this case to be transferred to Juvenile Court, the child is required to establish by a preponderance of the evidence that the transfer will serve the public interest. In determining whether the child has met his burden of proof, the court must consider the factors contained in section 6355(a)(4)(iii). Those factors are:

(A) The impact of the offense on the victim or victims -the victim died as a result of this shooting incident.

(B) The impact of the offense on the community - The Court recognizes that any crime involving violence has an impact on the Community; however, in this case, the Commonwealth is not seeking a conviction for murder of the first degree or murder of the second degree and the Commonwealth concedes the shooting was unintentional. In fact, their theory of the case is that the defendant's actions were reckless. Therefore, the Court does not believe there will be a substantially adverse impact on the community if this child is transferred to juvenile court.

(C) The threat of the safety of the public or any individual posed by the child - The

court finds that the child does not pose a threat to the safety of the public or any individual. The child does not have any prior history of violence. He does not own or possess any weapons. If it weren't for the victim asking to see Mr. Mancini's guns, the child probably would not have had access to or come in contact with any weapons.

(D) The nature and circumstances of the offense allegedly committed by the child

- During the evening hours of April 3 and the early morning hours of April 4, 1998, the defendant was at the residence of Joseph Mancini, along with the victim (Joseph Defeo) and a female. Mancini was drinking beer and the other individuals were drinking Schnapps. N.T., April 28, 1998, at pp. 20-22. At approximately 4:00 a.m., Mancini, the victim and the defendant went upstairs to Mancini's bedroom because the victim wanted to look at Mancini's guns. See, N.T., at p.5, 12, 15-16, 32. A case containing two weapon, a 9 millimeter Browning and a .22 caliber semiautomatic was placed on Mr. Mancini's bed. N.T., 15-16. The victim picked up the 9 millimeter Browning. He and Mancini were standing side by side in front of a dresser and the defendant was laying on the bed. N.T., at 5-6. The victim was examining a Browning nine (9) millimeter pistol and the defendant had a .22 caliber semiautomatic handgun. N.T., at p.7. The defendant began "dry firing" the .22 caliber handgun. N.T., at p. 7. Mancini described the dry firing as the defendant drawing the slide back and pulling the trigger probably two or three times without the gun being discharged. N.T., at pp. 8-9. Initially, Mancini heard the dry firing and then turned around to observe the defendant. N.T., at pp. 8-10. At that time, the weapon was pointed in a 'safe direction' toward the end of the bed/the defendant's feet. N.T. at pp. 10, 29. Mancini turned around to resume talking to the victim and under a minute later a shot rang out and the victim fell to the ground. N.T., at pp. 8, 10. The defendant went to the victim. He was hysterical and saying things like wake up and don't go to sleep. N.T., at p. 41. Mancini went to call 911. N.T., at p. 44.

During direct examination at the preliminary hearing, Mancini testified that the gun was empty during the dry firing and, initially on cross-examination, he stated that the clip was not in the gun when the defendant took it from the case. N.T. at 8, 17. However, upon further cross examination, Mancini could not recall if the clip was in the weapon when he put it in the case and he wasn't sure if it was in the .22 when it was fired. N.T., at p. 17-18. He also stated he didn't hear anything between the dry firing and the shot ringing out such as sounds that would have sounded like the clip going in the gun or anything of that nature. N.T., at p.28.¹ Mr. Mancini, however, was engaged in a conversation with the victim during the time between the dry firing and the shot ringing out. N.T., at p. 8.

(E) The degree of the child's culpability - The child is the actor; he is not an accomplice or co-conspirator. The theory of liability against him is recklessness. He asserts that the shooting was accidental, though.

(F) The adequacy and duration of dispositional alternatives available under this chapter and in the adult criminal justice system - Since the child is now almost eighteen years old, the juvenile court will only have jurisdiction over him for approximately three (3) years, i.e., until he reaches age twenty-one (21). Dr. John Kelsey, a licensed clinical psychologist, testified for the child. He stated that the child has gender identity issues, parent-child conflicts, and has been diagnosed with Adjustment Disorder with Mixed Disturbance of Mood and Behavior. He is impulsive

¹The court believes the majority of these facts are undisputed. The one area where the defendant's statement to Agent Ritter differs from Mr. Mancini's testimony at the preliminary hearing concerns the dry firing and whether the gun was loaded. In his statement to the Agent Ritter, the defendant states that he asked Mancini if the gun was loaded, he said no and the defendant even checked the clip and it looked empty to him. The defendant also stated the he was looking at the gun and the next thing he knew he heard a bang and saw some smoke; he didn't remember pulling the trigger or anything.

and immature for his age. His IQ is at the low end of the normal range. Basically, Dr. Kelsey was of the opinion that the child would have access to programs in the juvenile court system, where there is a greater focus on rehabilitation and treatment, which would more adequately address the child's educational, psychological and characterological difficulties than the adult criminal system. Although he could not guarantee a 'cure' of the child's maladies within three (3) years, he believed that the three (3) year time period was a reasonable amount of time to address them. The juvenile probation officers also believed that the child could be treated within the three (3) year period. The court found this testimony credible.

In the adult system, the court would have jurisdiction over the child for a much longer period of time. If the child was convicted of third degree murder, the guideline ranges for the minimum in this case would be six (6) to twenty (20) years and the statutory maximum would be 40 years. Given the nature and circumstances of this case, the court does not believe such a lengthy maximum sentence is likely, but it is possible. In the adult system, however, it is unlikely the child will receive the type of clinical therapy needed to address his difficulties. Also, Dr. Kelsey testified that there are significant dangers such as victimization of the child because of his gender identity issues and the child committing suicide if he would be placed in an adult correctional facility. Dr. Kelsey indicated that in his experience these dangers would be greater in a state correctional facility than in the Lycoming County prison. The Court also believes that under the facts and circumstances of this case the adult system will not rehabilitate the child but will house the child and, in all likelihood, teach him the criminal sophistication that he lacks.

This factor was probably the most difficult for the Court. In a perfect world, the Court could combine the benefits of both systems by placing the child in the programs of the juvenile system and then, if those programs were successful, paroling him with several years remaining before he

reached his maximum to ensure that the programs were successful. In this perfect world, if the programs were not successful or if the individual violated the conditions of his parole, the Court could then re-sentence the individual to serve a portion or the remainder of his maximum in the adult system such as a state correctional institution. This, however, is not a perfect world and the court doesn't have those options. It is faced with the unenviable choice of transferring this case to juvenile court where the Court will lose jurisdiction when the child reaches the age of 21 or keeping him in the adult system where he can be monitored for a longer period of time, but where there is a deep concern he will commit suicide, be victimized, and/or be exposed to more hard core criminals who may increase the likelihood of future criminal conduct. Under the facts and circumstances of this case, the Court decided the former was more appropriate.

(G) Whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors:

(I) Age - The child is seventeen years old.

(II) Mental capacity - The child has an IQ of 87, placing him at the low end of the normal range.

(III) Maturity - The child is impulsive and immature for his age.

(IV) The degree of criminal sophistication exhibited by the child - The child did not exhibit criminal sophistication. He did not plan this crime and the Commonwealth concedes that the shooting was intentional. The child did not own the weapon involved nor did he seek out a weapon prior to meeting the victim that night or anything of that nature.

(V) Previous records, if any - The defendant has a previous adjudication for disorderly conduct. There was no evidence presented which indicated that the defendant had any prior history

of violence.

(VI) The nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitate the child - As previously stated, the child's only contact with the criminal justice system in the past was an adjudication for disorderly conduct. He was placed under the supervision of the juvenile probation office for that offense one (1) or two (2) weeks prior to this incident. He has been cooperative while under supervision and has generally kept his appointments. He underwent a drug and alcohol evaluation. That evaluation did not recommend in-patient or out-patient treatment. Rather, the evaluation recommended drug and alcohol education. The child completed the educational classes. His juvenile probation officer Matthew Brennan's only criticism was that the child has not yet made a payment on his fines, although he did make a \$20 payment on his court costs.

(VII) Whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction - Dr. Kelsey and both juvenile probation officers testified that they believed the child was amenable to treatment and that three (3) years was a reasonable time within which to accomplish that objective.

(VIII) Probation or institutional reports, if any - The probation officers testified that the child was very compliant, unlike many other children they supervise. He is quite easy to supervise and has not given them any difficulties. He was tested for drugs and alcohol while on intensive supervision/electronic monitoring in connection with the current charges and he was tested for drugs through the juvenile probation office. Every test result was negative.

(IX) any other relevant factors - all the individuals present in the Mancini residence at the time of the shooting had consumed alcoholic beverages.

The Court carefully considered all these factors and concluded that the child had met his

burden of proof to show that transferring him to juvenile court was in the public interest. As part of this conclusion, the Court found that the child was amenable to treatment in the juvenile system. The court found that the following factors weigh in favor of such a transfer: the Commonwealth's admission that the shooting was unintentional, and it is pursuing these charges on a theory of recklessness; the small risk of the child posing a threat to the safety of the community; the child's lack of criminal sophistication; the child's only previous contact with the criminal system was a misdemeanor disorderly conduct adjudication; the child's cooperation and compliance while under the supervision of the juvenile probation department; the child's lack of a history of violence; the defense witnesses' testimony that three (3) years is a reasonable time within which to rehabilitate the child; the adequacy of the treatment the child can receive in the juvenile system as compared to the adult criminal system; the child's mental capacity; the likelihood that alcohol played some factor in this case; and the circumstances under which the child obtained access to the weapon. The primary factors weighing against the transfer were the impact on the victim and his family; the seriousness of the charges against the child; the age of the child; and the fact that the court will not be able to have the child under its jurisdiction and supervision for as lengthy a period of time as it would under the adult criminal system.²

²At first glance, it may seem somewhat inconsistent to find that three (3) years is a reasonable time within which to address the child's education, characterological, and psychological difficulties and this factor weighs in favor of transfer while at the same time noting that the length of supervision is greater in the adult system and this factor weighs against transferring the child to the juvenile system. The court, however, does not believe these positions are inconsistent. While the Court finds the psychologist's testimony credible that the juvenile system can treat the child's problems in the next three (3) years, it could be helpful to have the ability to monitor and supervise the child longer than that three (3) year period to guard against relapses, and the like. As mentioned when discussing the adequacy and duration of the alternatives in both the juvenile and adult systems, the Court believes it was faced with the unenviable choice of transferring the child

In summary, given the facts and circumstances of this case, the Court believed the public interest would be better served by placing the child in the juvenile court system where he could be both punished and rehabilitated than leaving him in the adult system where it is more likely he would gain criminal sophistication than become a well-adjusted, productive member of society.

By The Court,

Kenneth D. Brown, J.

cc: Eric Linhardt, Esquire
District Attorney
Work file

to the juvenile system which has better treatment options and a greater likelihood of rehabilitating the child into a productive member of society or leaving the child in the adult system which poses risks of victimization and suicide due to the child's gender identity issues and depression and has a greater likelihood of merely housing the child and teaching him the criminal sophistication that he has thus far lacked.