

State v. Aaron L. Johnson

I.D. No. 1111008719

June 15, 2012

FACTS

Aaron Johnson (hereinafter “Defendant”) applied to this Court for reverse amenability to have his case transferred to Family Court so that he may be tried as a juvenile. His indictment includes five counts: first degree murder (non-capital), two counts of possession of a deadly weapon during the commission of a felony, assault second degree, and possession of a deadly weapon by a person prohibited.

At roughly 1:50 A.M. on November 12, 2011, Defendant was the rear driver’s side occupant in a vehicle stopped at a traffic light at the intersection of State Route 10 and U.S. Route 13. A second vehicle pulled up behind the first vehicle. Previously, the occupants of both automobiles had attended a party a short distance away, which was broken up by police. Tevin Perry, the decedent victim, exited the second vehicle and approached the rear of the first vehicle. The front passenger side occupant of the first vehicle, Josh Gordon, exited the first vehicle. Shortly thereafter, fighting broke out between the occupants of both vehicles, which lasted for roughly the time of the red to green to red cycle of the traffic light. During the altercation, Defendant allegedly stabbed Perry in the upper chest and stabbed Isaiah Barkley twice in the back. Both Perry and Barkley were treated at Kent General Hospital. Perry died during emergency surgery. Defendant was 17 years old at the time of these alleged offenses.

Reviewing Defendant’s criminal record, at age fifteen a charge of disorderly conduct was diverted to Teen Court and dismissed by way of *nolle prosequi*.

Defendant has former adjudications of delinquency for inattentive driving on January 20, 2011 and conspiracy second degree on April 21, 2011. The conspiracy second

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degree charge resulted in six months on Level III probation, which Defendant completed with one curfew violation. Defendant officially completed Level III probation on November 3, 2011. The incident at hand followed on November 13, 2011. The Court held a reverse amenability hearing on April 23 and 24, 2012.

Standard of Review

Reverse amenability proceedings for the transfer of cases from Superior Court to Family Court are generally governed by 10 *Del. C.* §1011. Part (b) states as follows:

Upon application of the defendant in any case where the Superior Court has original jurisdiction over a child, the Court may transfer the case to the Family Court for trial and disposition if, in the opinion of the Court, the interests of justice would be best served by such transfer. Before ordering any such transfer, the Superior Court shall hold a hearing at which it may consider evidence as to the following factors and such other factors which, in the judgment of the Court are deemed relevant: (1) The nature of the present offense and the extent and nature of the defendant's prior record, if any; (2) The nature of past treatment and rehabilitative efforts and the nature of the defendant's response thereto, if any; and (3) Whether the interests of society and the defendant would be best served by trial in the Family Court or in the Superior Court.

The Delaware Supreme Court has stated:

[I]n the context of a reverse amenability hearing, the issue is whether the evidence in its totality (prosecution and defense) demonstrates, *prima facie*, that the State has a substantial likelihood of convicting the accused juvenile as charged. Such an examination of the evidence in its totality is necessary to provide a 'judicial counterweight to any perceived prosecutorial charging excess,' thereby reconciling the Delaware reverse amenability statute with the state and federal Constitutional guarantees of

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due process and equal protection.¹

DISCUSSION

Defendant allegedly stabbed two victims with a knife. Typically, a knife is considered a deadly weapon under 11 *Del. C.* § 222(5). In relation to Defendant's two counts of possession of a deadly weapon during commission of a felony, 11 *Del. C.* § 1447(d) states: "Every person charged under this section over the age of 16 years shall be tried as an adult, notwithstanding any contrary provision of statutes governing the Family Court or any other state law."

A related statute contains exactly the same provision as 11 *Del. C.* § 1447(d), and in the context of a reverse amenability hearing, the Delaware Supreme Court held that due to the legislature's clear legislative purpose of trying such defendants as adults and the legislature's sound discretion in doing so, the reverse amenability process "is not required to sustain the jurisdiction of the Superior Court for individuals over the age of 16 years charged with the violation of the felony/firearm statute."²

The State contends and Defendant concedes that, pursuant to 11 *Del. C.* § 1447(d), the two counts of possession of a deadly weapon during the commission of a felony must remain in Superior Court. The Court agrees.

¹*Marine v. State (Marine II)*, 624 A.2d 1181, 1185 (Del. 1993).

²*State v. Anderson*, 697 A.2d 379, 383 (Del. 1997). Although the "not required" language is somewhat murky in this portion of the opinion, the Court later explicitly rejects the availability of a reverse amenability hearing in the context of possession of a firearm during the commission of a felony. *Id.* at 385. The statute under which Defendant is charged contains exactly the same provision as the statute examined by the Delaware Supreme Court in *Anderson*.

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With regard to the remaining charges, in a situation analogous to the one at hand, the Delaware Supreme Court held that “other offenses joined with firearms violations continue to be subject to the reverse amenability process under the usual standards governing the joinder of offenses.”³ The Court went on to conclude:

In most cases, we envision that the Superior Court most likely will decide to retain jurisdiction over companion charges simply because the standards of joinder may so suggest. In the reverse amenability process decision as to other offenses, the Superior Court is free, of course, to take into consideration as a factor, perhaps a significant factor, the fact that the felony/firearm offense must be decided in the Superior Court and that the juvenile will not be spared adult court proceedings in any event, regardless of the merit of the companion charges and the prospect for rehabilitation. But, in our view, nothing in section 921(16) prohibits the Superior Court from holding a reverse amenability hearing and permitting transfer to the Superior Court of those companion charges over which the Family Court would otherwise have had jurisdiction.⁴

Indeed, Defendant will not be spared adult proceedings on two counts of possession of a deadly weapon during the commission of a felony. Ten *Del. C.* § 1010(a) provides the circumstances under which a child shall be tried as an adult. The pertinent circumstance in this case is the charge of first degree murder. The Court reviews the charge of first degree murder based on the evidence presented at the reverse amenability hearing in light of 10 *Del. C.* § 1011(b) and for “whether the evidence in its totality (prosecution and defense) demonstrates, *prima facie*, that the State has a

³*Id.* at 380.

⁴*Id.* at 384.

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substantial [or fair] likelihood of convicting the accused juvenile as charged.”⁵

Starting with the latter evaluation for the charge of murder in the first degree, Defendant was indicted under 11 *Del. C.* § 636(a)(1), which states: “A person is guilty of murder in the first degree when: (1) The person intentionally causes the death of another person” Such intent occurs when “it is the person’s conscious object to engage in conduct of that nature or to cause that result.”⁶ Several pieces of evidence lead the Court to believe that there is a fair likelihood of convicting Defendant of murder in the first degree. First, by the admission of Defendant, he had a knife, and he swung the knife at Perry, though he thought he just stabbed him in the hands. Second, according to Detective William Porter, the majority of the people in both cars said they saw Defendant exit vehicle one and fight by swinging his hand in a stabbing motion. Third, according to the driver of vehicle one, Alexia Lopez, when Defendant got back into the car he stated to her, “I got them for you.” Fourth, the fact that Perry was wounded directly in the chest is indicative of an intent to cause death.

Defendant presented evidence that there may have been a confrontation between the individuals in the two vehicles at the aforementioned party in the Camden-Wyoming area earlier that evening. Defendant also presented evidence that vehicle two may have followed vehicle one and that Perry may have been punching through the window of

⁵*Marine II*, 624 A.2d at 1185. “Substantial” and “fair” appear to be used interchangeably in this context to denote a real probability that a reasonable jury could convict based on the totality of the circumstances. See *State v. Waters*, I.D. No. 0910007308, at 2 (Del. Super. Apr. 14, 2010); *State v. Mayhall*, 659 A.2d 790, 792 (Del. Super. 1995).

⁶*Burrell v. State*, 766 A.2d 19, 25 (Del. 2000) (quoting 11 *Del. C.* § 231(a)(1)).

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vehicle one at Defendant before Perry was stabbed.

Viewing the evidence in its totality, the Court finds that the State has a fair likelihood of convicting the Defendant as charged. Further, for the lesser included offense, second degree murder, which requires that Defendant “recklessly cause[d] the death of another person under circumstances which manifest a cruel, wicked, and depraved indifference to human life,”⁷ the State has an even stronger case. Even if the State did not have a fair likelihood of convicting Defendant of first degree murder, a child must be proceeded against as an adult when “[t]he acts alleged to have been committed constitute first or second degree murder”⁸

Now that the Court has determined that Defendant was properly charged with first degree murder under *Marine I* and *II*, the Court considers the factors under 10 *Del. C.* § 1011(b). The nature of the present offense is second only to capital murder and is therefore very grave. The Court recounted Defendant’s prior record above. It is, by no means, the worst juvenile record that the Court has seen, but conspiracy in the second degree is a significant criminal offense. In terms of past treatment and rehabilitative efforts and the nature of Defendant’s response, Defendant has participated in Teen Court and has served six months on Level III probation. The alleged crimes at hand occurred less than a month after Defendant’s discharge from his Level III sentence. In short, Defendant has shown a trend of criminal activity, which at present appears to be unbroken.

⁷11 *Del. C.* § 635(1).

⁸10 *Del. C.* § 1010(a)(1).

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In reviewing whether the interests of society and Defendant would be best served by trial in Family Court or Superior Court, the Court heard from several witnesses. Testifying on behalf of Defendant, Dr. Abraham J. Mensch, a licensed psychologist, discussed his psychological evaluation of Defendant. Dr. Mensch testified that Defendant has a slight memory impairment, but does not suffer from any other notable mental health issues. Richard Callahan, a Division of Youth Rehabilitative Services Probation Officer, testified that, in his experience, his department could not provide services or placement to someone of Defendant's criminal background and age. Defendant does not need mental health treatment, nor could the Division of Youth Rehabilitative Services provide services or placement if he did. It is not in the interests of society to place the remaining charges in Family Court for treatment Defendant does not need and that the Division of Youth Rehabilitative Services cannot provide.

After careful review of the factors above, the Court finds that the interests of justice would not be best served by trial of the remaining charges in Family Court. Additionally, on the charge of murder in the first degree, and the remaining two charges, assault in the second degree and possession of a deadly weapon by a person prohibited, the principles of joinder militate against transfer to Family Court. Superior Court Criminal Rule 8(a) provides as follows:

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

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Before the Court is one continuous incident. All five charges are based upon the alleged actions of Defendant during a fight that took place over the course of a few minutes. The Court finds that the charges are properly joined and should be heard in Superior Court.

CONCLUSION

Under 11 *Del. C.* § 1447(d), Defendant's two counts of possession of a deadly weapon during the commission of a felony must be heard in Superior Court. The Court finds that there is a fair likelihood of conviction on Defendant's first degree murder charge. After review of 10 *Del. C.* § 1010 (b)(1) - (3), the Court finds that the interests of justice are not best served by transfer of the first degree murder charge to Family Court. Moreover, the principles of joinder urge the Court to find that all of Defendant's charges should be heard together in Superior Court. Defendant's application is hereby *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Counsel