

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)
)
 v.) Crim. ID Nos. 2006000287;
) 2008001207
 HARRY CHARLES,)
)
 Defendant.)

ORDER

Submitted: August 2, 2021

Decided: August 6, 2021

Upon Consideration of Defendant's Motion to Transfer Charges to Family Court,
DENIED.

Gregory Babowal, Esquire, and Christel Duff, Esquire Deputy Attorneys General,
Department of Justice, Wilmington, Delaware. *Attorneys for State.*

Alexander W. Funk, Esquire, Curley, Dodge, Fitzgerald & Funk, LLC, Dover,
Delaware and Zachary A. George, Esquire, Hudson, Jones, Jaywork & Fisher,
LLC, Dover, Delaware. *Attorneys for Defendant.*

MEDINILLA, J.

I. INTRODUCTION

1. At 16,¹ Defendant Harry Charles stands accused for his alleged involvement in two separate incidents that led the State to charge him as an adult offender. In the first case, Defendant faces charges for Murder First Degree, Conspiracy First Degree, Possession of a Deadly Weapon During Commission of a Felony, Possession of a Firearm by a Person Prohibited, Reckless Endangering First Degree and Criminal Mischief.² In the second, Defendant faces charges for Possession of a Firearm during the Commission of a Felony, Possession, Purchase, Own, or Control of a Firearm/Ammunition by a Person Prohibited, six counts of Reckless Endangering, Conspiracy Second Degree, and five counts of Criminal Mischief less than \$1000.³ He seeks to transfer all charges to Family Court under 10 *Del. C.* § 1011. A reverse amenability hearing was held on August 2, 2021. Upon consideration of the parties' submissions, oral argument, and the record in this case, Defendant's Motion to Transfer Charges to Family Court is **DENIED**.

¹ Defendant's date of birth is January 7, 2005.

² See Indictment, True Bill Filed, *State of Delaware v. Harry Charles*, Crim. ID No. 2006000287, D.I. 2 (Del. Super. Ct. Sept. 8, 2020).

³ See Indictment, True Bill Filed, *State of Delaware v. Harry Charles*, Crim. ID No. 2008001207, D.I. 1 (Del. Super. Ct. Oct. 5, 2020).

II. FACTUAL AND PROCEDURAL HISTORY⁴

2. The two sets of charges stem from events that occurred seventeen hours apart on June 1, 2020. Detectives Matthews and Boone of the Dover Police Department testified at the hearing for the State as to both incidents, respectively.

3. In the first, police responded to a shots fired incident in the early hours of June 1 at approximately 12:48 a.m. in the area of 854 Woodcrest Turn in Dover. Upon arrival, Dover PD met with five different residents who informed them that their residences had been struck by gunfire while they and other individuals were inside. The gunshots caused approximately \$2,500 in property damage.

4. Detective Matthews testified that a witness reported having observed two black male suspects (one light-skinned and the other dark) exit a grey vehicle. The light-skinned suspect approached the witness's door with a handgun in his hand while the dark-skinned suspect went around the corner. The light-skinned suspect began firing into the witness's door at which time the witness returned fire in self-defense before the suspects ran off. One witness identified this light-skinned individual as co-defendant Raiquan Fisher. Detective Matthews further testified that Defendant matched the description of the dark-skinned male and that the casings

⁴ This recitation is based upon oral arguments and evidence introduced at the reverse amenability hearing on Defendant's Motion to Transfer on August 2, 2021.

collected after the shooting at Woodcrest Turn matched those of a .40 caliber handgun.

5. Detective Boone also testified regarding the homicide investigation that took place hours later related to the shooting death of Mykal Dempster (Victim). At approximately 6:54 p.m. Dover Police responded to the scene of the crime after a report of shots fired. Upon arrival, police discovered a silver vehicle with Victim in the driver's seat with multiple gun-shot wounds to his back and head. He was pronounced dead on the scene.

6. Video and audio captured the incident that depicts the vehicle in motion, seven gunshots are heard within the timespan of a few seconds, the vehicle stops, and two suspects flee from the vehicle. One witness obtained a photograph of the suspects. Detective Boone testified that witnesses described having observed two black males where at least one of them had a handgun and had shot the victim before fleeing the scene. Witnesses further observe both co-defendants running with firearms through residential back yards. And one witness relayed that both defendants sought to hide in his home when he observed them hiding in his yard, but he refused them entry. Officers were able to locate Defendant and he was taken into custody.

7. When apprehended, Defendant was wearing the clothing matching the description given by witnesses and in possession of a Glock .40 caliber handgun.

Shortly after, police located and arrested Fisher. Police also located a 9mm handgun, which witnesses saw him toss just prior to his arrest.

8. When interviewed, Defendant admitted that, while sitting in the back seat of the silver vehicle, he shot Victim multiple times with a .40 caliber handgun. According to Detective Boone, Defendant explained that Victim first pointed a gun at Defendant, which led both to grapple for the weapon. Claiming it was Victim that pulled a gun on Defendant, Defendant admitted to the shooting. Detective Boone highlighted some inconsistencies regarding Defendant's version that did not match the evidence collected, including that no gun was found in the vehicle to suggest that Victim was armed. Defendant has been held in juvenile detention since his arrest.

III. STANDARD OF REVIEW

9. The reverse amenability process is meant to identify juveniles charged as adults who are amenable to the rehabilitative process of the Family Court.⁵ If the juvenile files a motion to transfer the adult charges, this Court must hold a reverse amenability hearing and weigh the four factors⁶ set forth in 10 *Del. C.* § 1011(b).⁷

⁵ See generally 10 *Del. C.* §§ 1010-11; see also *Hughes v. State*, 653 A.2d 241, 249 (Del. 1994) (quoting *Marine v. State*, 624 A.2d 1181, 1184 (Del. 1993); *Marine v. State*, 607 A.2d 1185, 1209 (Del. 1992)).

⁶ The Court may consider evidence of: (1) “[t]he nature of the present offense and the extent and nature of the defendant’s prior record, if any;” (2) “[t]he nature of past treatment and rehabilitative efforts and the nature of the defendant’s response thereto, if any;” (3) “[w]hether the interests of society and the defendant would be best served by trial in the Family Court or in the Superior Court[;]” and (4) any “other factors which, in the judgment of the Court are deemed relevant.” 10 *Del. C.* § 1011(b).

⁷ See, e.g., *State v. Harper*, 2014 WL 1303012, at *5-7 (Del. Super. Mar. 31, 2014).

IV. DISCUSSION

A. Fair Likelihood of Conviction

10. Before weighing the § 1011(b) factors, “this Court must preliminarily determine whether the State has made out a *prima facie* case against the juvenile.”⁸ The Court considers “whether there is a fair likelihood that [the defendant] will be convicted of the crimes charged.”⁹ Furthermore, “[a] real probability must exist that a reasonable jury could convict on the totality of the evidence assuming that the evidence adduced at the reverse amenability hearing stands unrebutted by the defendant at trial.”¹⁰ Since Defendant was 15 at the time of the alleged offenses, the Court need not consider the applicability of 11 *Del. C.* § 1447A(f) as to the firearm charges.

11. As to the Murder First Degree and accompanying charges, at this juncture, a reasonable jury could convict on the totality of the evidence assuming the State’s evidence stood unrebutted. As to the shootings that took place at the Woodcrest Turn residences, co-defendant was identified as one of two suspects who fired into multiple residences where approximately ten victims were located. He was accompanied by a dark-skinned individual matching Defendant’s description. Casings found at that shooting matched a .40 caliber handgun. Defendant was in

⁸ *Harper*, 2014 WL 1303012, at *5 (citing *Marine v. State*, 624 A.2d 1181, 1185 (Del. 1993)).

⁹ *Id.*

¹⁰ *Id.*

possession of a .40 caliber Glock when arrested hours later and admitted to shooting Victim. After reviewing the totality of the evidence presented, there is a fair likelihood that Defendant would be convicted of the charged offenses. For these reasons and those stated on the record, the State has established its *prima facie* case with a fair likelihood of conviction at trial.

B. Weighing § 1011(b)'s Four Factors

12. Under 10 *Del. C.* § 1010, when a juvenile is charged with the crime of Murder First Degree, among others, a child shall be proceeded against as an adult.¹¹ Therefore, “since a juvenile charged with a designated felony in the Superior Court has lost the benefit of Family Court adjudication by statutory pronouncement, there is a presumption that need exists for adult discipline and legal restraint. Hence, the burden is upon the juvenile to demonstrate to the contrary.”¹² In considering whether the factors weigh in favor of transfer, the presumption stands.

1. Section 1011(b) Factor One: Nature of Present Offense and the Extent and Nature of Defendant's Prior Record

¹¹ See 10 *Del. C.* § 1010(a)(1).

¹² *Harper*, 2014 WL 1303012, at *4 (quoting *Anderson*, 385 A.2d at 740) (internal quotations omitted); see also *State v. Mayhall*, 659 A.2d 790, 795 (Del. Super. 1995) (“I also take into consideration the fact that by including second degree murder in those offenses where original jurisdiction has been conferred on the Superior Court under 10 *Del. C.* § 1010 the legislature has created a rebuttable presumption that juveniles charged with that crime should be tried as adults and the burden of proof rests with each defendant to rebut that presumption.”).

13. The first § 1011(b) factor is two pronged.¹³ All charges against Defendant are violent and serious, and weigh against transfer. The second prong also weighs against transfer. Defendant is a person prohibited from possessing a firearm due to a juvenile adjudication for Assault First Degree, which was a lesser included offense for an Attempted Murder charge that resulted in the paralysis of that victim. Furthermore, Defendant has been adjudicated delinquent prior to this instance for multiple charges, including four felonies. Defendant spent eight months at Level V Ferris School in relation to these prior adjudications. This fatal shooting took place four months later while Defendant was on probation. For these reasons and those stated on the record, both prongs weigh against transfer.

2. Section 1011(b) Factor Two: Nature of Past Treatment and Defendant's Response

14. Defendant's responses to past treatment varies depending on the experts. Defendant's expert, Robin Belcher-Timme, Psy.D., ABPP, CCHP-MH, testified and provided an extensive and comprehensive report. In essence, he opined that systemic failures contributed to the escalating violent behavior exhibited by Defendant, including a failure to diagnose Defendant with Posttraumatic Stress Disorder (PTSD)¹⁴ (and to some extent, the lack of programming during COVID-

¹³ See 10 Del. C. § 1011(b)(1).

¹⁴ Psychiatric Evaluation of Robin Belcher-Timme, Psy.D., at 6 (Dec. 20, 2020).

19). As such, he opined that with proper treatment to address the PTSD and the right structures in place, Defendant would be amenable to the Family Court.

15. In support of the PTSD diagnosis, Dr. Timme pointed to Defendant's childhood adversity which was "most notably in the form of chronic exposure to extreme community violence."¹⁵ Dr. Timme stated that Defendant has intrusive and distressing memories of these events which cause him to have difficulty concentrating and sleeping.¹⁶

16. Though he opined that Defendant should remain in the Family Court, he acknowledged that this case was "not an easy one in terms of deciding jurisdiction or the interests of justice."¹⁷ Though he believes Defendant remains amenable, he concluded, "[h]owever, it is also my opinion that treatment must include *a lengthy period of residential placement*, combined with active efforts to address [Defendant's] experience of childhood adversity, violence risk, criminogenic thinking, and antisocial peer groups."¹⁸ Suggesting further that "YRS could potentially place [Defendant] in an out-of-state contracted facility for long-term residential placement,"¹⁹ he could not say what facility would work.²⁰

¹⁵ Psychological Evaluation of Robin Belcher-Timme, Psy.D., at 6 (Dec. 20, 2020).

¹⁶ *Id.*

¹⁷ *Id.* at 11.

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.* at 9.

²⁰ *Id.*

17. Dr. Timme further expressed that “at 15 years of age, [Defendant] has nearly four years under the jurisdiction of YRS in practice, although [he did] believe the statute allows for treatment until age 21.”²¹ When the Court sought clarification regarding YRS’s inability to offer services beyond age nineteen, as Defendant is now sixteen and one-half years old, Dr. Timme acknowledged that YRS would currently only provide services for two and one-half years.

18. By contrast, and with an equally extensive report, Stephen Mechanick, M.D., testified for the State, setting out his opinion to support why Defendant is not amenable to the Family Court or the services of YRS. Although Dr. Mechanick does not specifically address the § 1011(b) factors in his report, he outlined fourteen reasons why he believes that Defendant is not amenable to the juvenile system’s services.²² Such reasons include Defendant’s history of significant behavioral problems, drug use, and his prior criminal adjudication for Assault First Degree, Possession of a Firearm, and Conspiracy, which Defendant has denied responsibility for and shown little to no remorse.²³ Dr. Mechanick also points to the fact that Defendant, despite his detention at Stevenson House, resumed selling drugs soon

²¹ Psychological Evaluation of Robin Belcher-Timme, Psy.D., at 9 (Dec. 20, 2020).

²² See Psychiatric Evaluation of Stephen Mechanick, M.D., at 10-11 (May 29, 2021).

²³ *Id.*

after,²⁴ and he served time at Ferris school but obtained a firearm while on probation.²⁵

19. In addition to the experts' disagreement regarding amenability, they disagree about Defendant's psychiatric diagnosis. Dr. Mechanick did not accept that Defendant suffers from PTSD, opining instead that Defendant's intrusive thoughts and trouble sleeping began after the current offense.²⁶ In addition, Dr. Mechanick diagnosed Defendant with Conduct Disorder,²⁷ identifying the following criteria in support of his assessment: repeated fighting, truancy, marijuana use, drug sales, and Defendant's history of criminal offenses.²⁸ Dr. Timme disagreed with this diagnosis, indicating that he identified only two criteria, rather than the required three, to confirm the diagnosis.²⁹

20. The Court need not determine Defendant's diagnosis to determine whether he has responded well to past treatment. Though the nature of the treatment may have been impacted by the misidentification of a diagnosis or lack of resources due to COVID-19, there is no dispute that Defendant's behavior has escalated. That said, the Court accepts that Defendant demonstrated compliance with probationary terms such as GPS and he is to be commended for reaching Falcon Status at

²⁴ Psychiatric Evaluation of Stephen Mechanick, M.D., at 11 (May 29, 2021).

²⁵ *Id.*

²⁶ *Id.* at 9.

²⁷ *Id.* at 10.

²⁸ *Id.*

²⁹ Psychiatric Evaluation of Robin Belcher-Timme, Psy.D., at 4 (Dec. 20, 2020).

Stevenson House while in detention. He appears to do well with structure and parameters. But GPS and following rules while in detention are not treatment.

21. Defendant has not responded well to the treatment efforts that have been afforded. Even accepting Dr. Timme's opinion, the efforts and resources that have already been expended have not been shown to improve Defendant's behavior. It is not clear if returning Defendant to Family Court would prove similarly unsuccessful. Moreover, Dr. Timme recommends a lengthy period of rehabilitation. With a remaining two and one-half years of services at YRS, this is not enough. The Court also considers the Reverse Amenability Report dated July 28, 2021, from YRS, which, consistent with Dr. Mechanick, recommends Defendant remain in Superior Court.³⁰ Therefore, this Court finds that this factor weighs against transfer.

3. Section 1011(b) Factor Three: Interest of Society and Defendant

22. The State previously determined it appropriate to charge Defendant as a juvenile for Attempted Murder. The State chose not to charge Defendant as an adult and instead had him adjudicated delinquent through the juvenile justice system. The Court assumes that in so doing, the State considered Defendant's age and factors to include impulsivity, immaturity and brain development as highlighted in great

³⁰ See YRS Reverse Amenability Report, at 4 (July 28, 2021).

length by Dr. Timme's report, more fully discussed in cases such as *Graham v. Florida*³¹ and *Miller v. Alabama*.³²

23. This is also made clear through the resolution of Defendant's charges, where instead of proceeding against Defendant for the Attempted Murder of an individual who is currently paralyzed, the State extended an offer of the lesser included offense (LIO) of Assault First Degree, for which Defendant served eight months at Level V in the Ferris School.

24. In making its charging decision and allowing Defendant to accept a plea to the LIO, there is little doubt that the State's goal was to give Defendant an opportunity to rehabilitate. Unfortunately, Defendant's violent behavior has escalated despite the services from YRS and the involvement of the Family Court. No evidence was offered to suggest that YRS would service Defendant differently if returned to Family Court nor that Defendant would respond favorably. With only thirty months of potential rehabilitation, Defendant may transition into adulthood

³¹ 560 U.S. 48, 68 (2010) (“[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavioral control continue to mature through later adolescence.”).

³² 567 U.S. 460, 471 (2012) (“[C]hildren have a ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking.”) (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

more effectively if he remains in this Court. For these reasons, the Court finds that the interests of society and Defendant weigh against a transfer.³³

CONCLUSION

The factors under 10 *Del. C.* § 1011(b) weigh against transfer. For the reasons stated above, Defendant's Motion to Transfer Charges to Family Court is **DENIED**.

IT IS SO ORDERED.

/s/ Vivian L. Medinilla
Judge Vivian L. Medinilla

oc: Prothonotary
cc: Defendant
Department of Justice

³³ The fourth factor of § 1011(b) – other factors the Court deems relevant – has been sufficiently addressed in the other § 1011(b) factors such that the Court need not explicitly address this factor in this ruling.