

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,)
)
 5.)
)
JACK G. CLAY, III,)
(ID. No. 0010004449))
)
 Defendant.)

Submitted: April 23, 2001
Decided: July 25, 2001

James J. Kriner, Esq., Dover, Delaware. Attorney for State.

Gregory A. Morris, Esq., Dover, Delaware. Attorney for Defendant.

Upon Consideration of Defendant's
Motion For Transfer to Family Court
DENIED

VAUGHN, Resident Judge

ORDER

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Upon consideration of the defendant's motion for transfer to the Family Court, and the record in this case, it appears that:

1. The defendant is charged with Assault in the First Degree ("Assault") and Possession of a Firearm During the Commission of a Felony ("PFDCF"). The defendant was 16 years of age at the time of the alleged offenses. Therefore, the latter charge must be resolved in this Court.¹ The defendant has moved for an order transferring the Assault charge to Family Court. A reverse amenability hearing was held. This is the Court's ruling on the motion.

2. The charge, speaking of it in the singular, is simple and straightforward. It is alleged that the defendant intentionally caused Willis T. Matthews serious physical injury by shooting him with a handgun. At the hearing the investigating police officer testified that he became involved in this matter when he learned that Mr. Matthews had been transported to a hospital for treatment of his gunshot wound. The bullet had gone into Matthews' left side, nicked a vertebra, then exited. At first the victim was reluctant to cooperate with the officer and denied knowing who had shot him, but eventually he identified the defendant by name as his assailant. He also picked the defendant's picture out of a six-photo lineup. He told the officer that the shooting arose out of a dispute over division of money from a drug deal. Nothing was presented at the hearing which would cause one to question the reliability of this basic

¹ 11 *Del. C.* §1447A(e).

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account at this stage of the proceedings. Based upon the evidence presented at the hearing, I find that the State established a *prima facie* case against the defendant as to both charged offenses.

3. Since *State v. Anderson*,² this Court has considered motions to transfer companion charges to Family Court where there is a PFDCF charge, which must remain in this Court, in at least five cases.³ As is set forth in the orders in those cases, there are five factors which the Court must consider in this context: (1) the nature of the present offenses 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; (3) whether the interests of society and the defendant would be better served by a trial in the Family Court or the Superior Court; (4) whether the companion charge or charges should remain in the Superior Court

² Del. Supr., 697 A.2d 379 (1997).

³ *State v. Roscoe*, Del. Super., Cr. A. Nos. IK99-07-0201-0202, Witham, J. (May 1, 2000) (ORDER); *State v. Curry*, Del. Super., Cr. A. Nos. IK99-07-0244-0246, Ridgely, P.J. (Jan. 26, 2000) (ORDER); *State v. Caldwell*, Del. Super., Cr. A. Nos. IK99-01-0214-0219, Ridgely, P.J. (Sept. 17, 1999) (ORDER); *State v. Hooten*, Del. Super., Cr. A. Nos. IK98-05-0140-0142, Ridgely, P.J. (Dec. 14, 1998) (ORDER); *State v. Sells*, Del. Super., Cr. A. Nos. IK98-02-0530-0532, 0534-0542, Ridgely, P.J. (July 14, 1998) (ORDER).

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based on the standards which govern joinder and severance of the offenses; and (5) the effect of the inevitable Superior Court adult proceeding and possible incarceration, regardless of the merits of the companion charges, and the prospect for rehabilitation.

4. Although the officer testified that the defendant had several drug-related arrests, the defendant apparently has no significant prior record and, therefore, apparently no significant past treatment or rehabilitative efforts. These factors favor transfer of the Assault charge to Family Court. However, the nature of the offenses, which is considered in paragraph two above, and factors (3), (4) and (5) above, all favor retaining the Assault charge in this Court. Proper joinder is clear. In fact, the evidence of one charge necessarily includes the evidence of the other charge. The State's case will include the eyewitnesses testimony of the alleged victim. Therefore, it appears that there is a fair likelihood that a jury will convict the defendant of both charges if the evidence presented at the hearing is presented at the trial and remains uncontradicted. If so, the defendant must be incarcerated for at least three years. A detention officer from the Stevenson House testified that in his opinion the defendant needs a program to address use and sale of drugs. He also testified as to the probable punishment and/or treatment which the defendant would receive if the assault charge were handled through Family Court. Based upon the evidence presented, and bearing in mind that this defendant at the age of 16 has already been involved in an alleged shooting over a drug deal gone bad, it would appear that the adult treatment programs available at Levels 5 and 4 would give the defendant a more intensive, and therefore more beneficial, exposure to treatment than the programs in place for juveniles.

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Finally, society's interest in having teenagers 16 years or older treated as adults when they are alleged to have committed crimes with handguns is reflected in the General Assembly's enactment of §1447A(e) and has been noted in judicial opinions.⁴

5. For these reasons, the defendant's motion to transfer the Assault charge to Family Court is *denied*.

IT IS SO ORDERED.

Resident Judge

oc: Prothonotary
cc: Order Distribution

⁴ *Anderson*, 697 A.2d at 383; *State v. Ayers*, Del. Supr., 260 A.2d 162 (1969).