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SJC-13206

MALIKAI NICHOLAS-TAYLOR vs. COMMONWEALTH.

Suffolk. May 4, 2022. - August 30, 2022.

Present: Budd, C.J., Gaziano, Cypher, Kafker, Wendlandt, & Georges, JJ.

Bail. Pretrial Detention. Department of Youth Services.
Sheriff. Homicide. Assault with Intent to Rob. Practice,
Criminal, Trial of indictments together. Statute,
Construction.

Civil action commenced in the Supreme Judicial Court for the county of Suffolk on October 25, 2021.

The case was heard by Lowy, J.

Melissa Allen Celli (Jason Benzaken & Moira C. Barry also present) for the petitioner.

Laura A. McLaughlin, Assistant District Attorney, for the Commonwealth.

Taylor Henley, Committee for Public Counsel Services, for youth advocacy division of the Committee for Public Counsel Services & another, amici curiae, submitted a brief.

Katherine W. Briggs, for Department of Youth Services, amicus curiae, submitted a brief.

GEORGES, J. We are asked to decide whether, where a juvenile defendant¹ has been charged with murder and a nonmurder offense, properly joined pursuant to Mass. R. Crim. P. 9 (a), 378 Mass. 859 (1979), a Superior Court judge has discretion to craft a bail order releasing the defendant on personal recognizance on the murder charge, and ordering the defendant to be held without bail on the related nonmurder charge, such that the defendant may continue to be held by the Department of Youth Services (DYS) after his eighteenth birthday. Here, the defendant,² who was sixteen years old at the time of the offense, is charged with murder in the first degree and armed assault with intent to rob. A Superior Court judge concluded that she lacked the discretion to craft such a bail order and committed the defendant to the custody of the sheriff pursuant to G. L. c. 119, § 68. The defendant filed a petition in the county court challenging the judge's determination and seeking extraordinary relief pursuant to G. L. c. 211, § 3; a single justice denied the petition. Because we conclude that, under the plain language of G. L. c. 119, § 68, a juvenile defendant

¹ A "juvenile defendant" in this context is a defendant who was under the age of eighteen at the time of the commission of the offense, regardless of whether the defendant attains the age of eighteen prior to trial. See G. L. c. 119, §§ 54, 72.

² Although Malikai Nicholas-Taylor commenced this action by filing a petition in the county court, for convenience, we refer to him as the defendant.

who is charged with murder and a properly joined nonmurder offense must be committed to the custody of the sheriff if the defendant is not released on bail, we affirm.³

1. Background. a. Factual allegations. We summarize the facts alleged in the Commonwealth's "statement of the case," which was filed in the Superior Court when the defendant was arraigned.

On July 21, 2020, at approximately 3:16 P.M., Stoughton police received a 911 telephone call for shots fired in the area of Jones Terrace. When officers arrived at the scene, they observed the victim, Christian Vines, in his vehicle, alone and unresponsive. He was transported to a hospital, where he was pronounced dead. An autopsy revealed that the cause of death was gunshot wounds to the right arm and chest.

Surveillance video footage from a nearby library, taken at the time of the shooting, showed the victim sitting alone in his vehicle when two individuals, one of whom later was identified as the defendant, and the other as codefendant Jaylen Wallace, left a house on Park Street and walked directly across the street into the parking lot of the building where the victim's vehicle was parked. As the two reached the vehicle, Wallace

³ We acknowledge the amicus brief and supplemental letter submitted by the Committee for Public Counsel Services, Youth Advocacy Division, and the Massachusetts Association of Criminal Defense Lawyers; and the amicus letter submitted by DYS.

attempted to enter it through the rear passenger's side door. He then retrieved what seemed to be a firearm from the area of his waist. Wallace pushed his upper torso and arms into the passenger compartment through a partially open window. After a few seconds, he pulled away from the window and ran from the vehicle. Behind Wallace, the defendant ran in the same direction.

Law enforcement officers later determined that Wallace had arranged to purchase marijuana from the victim using the online application Snapchat. State police also received a tip from a resident on Park Street that the defendant had been with Wallace at the time of the shooting. Several witnesses testified before a grand jury that the defendant, Wallace, and others had been at the Park Street home of Tyleke Curry during the previous evening and the early morning hours of July 21, 2020. Photographs and video recordings extracted from Curry's and Wallace's cellular telephones showed Curry and Wallace in Curry's bedroom holding firearms; one of the weapons was a .40 caliber handgun.

Another resident of Curry's building testified before the grand jury that the defendant had been on the side porch of the building minutes after the shooting, and that he left before police arrived at the scene. Call detail records from the defendant's cellular telephone indicated that the device had been in the area of the building at that time; surveillance

video footage from a nearby convenience store showed the defendant in that store shortly after the shooting.

b. Prior proceedings. A grand jury indicted the defendant on charges of murder, G. L. c. 265, § 1, and armed assault with intent to rob, G. L. c. 265, § 18 (b), on a theory of joint venture. At the time of his arraignment, in February of 2021, the defendant was seventeen years old.⁴ He pleaded not guilty, and a Superior Court judge ordered that he be held without bail. Because the Norfolk County sheriff does not have facilities to hold an individual who is under the age of eighteen separate from the adult population, as required by the Juvenile Justice and Delinquency Prevention Act, 34 U.S.C. §§ 11101 et seq. (JJJPA), formerly 42 U.S.C. §§ 5601 et seq.,⁵ the defendant was held by DYS "as a courtesy." At the arraignment, the Commonwealth moved to join the two indictments pursuant to Mass. R. Crim. P. 9 (a); the judge subsequently allowed the motion in March of 2021.

In advance of his eighteenth birthday, at which time he would no longer be required to be held separately from adult

⁴ On the day of the shooting, the defendant was sixteen years old.

⁵ The JJJPA "provides financial assistance to States, based on compliance with enumerated conditions, for juvenile justice programs." Commonwealth v. Florence F., 429 Mass. 523, 527 (1999).

inmates, the defendant filed a motion that the bail order be modified so that he could remain in DYS custody after he turned eighteen. The defendant proposed, and DYS initially agreed, that although he could not remain in DYS custody on the murder charge after he turned eighteen, he could remain in DYS custody on the charge of armed assault with intent to rob. On the basis of representations by DYS at the hearing on the defendant's motion, the judge ordered that the defendant be released on personal recognizance on the murder charge but that he continue to be held by DYS without bail on the assault charge.

DYS subsequently notified the Superior Court, however, that it had been mistaken and that, although the defendant had "done very well in [DYS] programs," in DYS's view, the defendant could not remain in its custody -- either on the murder indictment or on any nonmurder indictment that had been joined with it -- without violating the "sight and sound" separation requirements of the JJDPa, see, e.g., 34 U.S.C. § 11133(a)(11)(B), because the charge of armed assault with intent to rob was "part of the totality of the conduct related to the murder charge for which he has been indicted as an adult." DYS maintained that it could continue to hold the defendant in connection with a separate juvenile proceeding, if the defendant were released on personal recognizance with respect to the murder indictment and any related indictments that had been joined pursuant to Mass. R.

Crim. P. 9 (a). DYS recognized as well that the applicability of the Federal "sight and sound" separation requirements to an individual in the defendant's position was "an issue of first impression that ha[s] not been litigated."

In response, the Commonwealth moved to have the defendant held without bail at an adult facility on both charges. After a hearing in October 2021, the motion judge vacated her prior ruling and ordered that the defendant be held without bail in a house of correction on both charges. At the hearing, the judge explained that she felt "obligated" to vacate her prior order due to the "statutory constriction and the case law."

The defendant filed a petition in the county court pursuant to G. L. c. 211, § 3; he argued that the Superior Court judge erred in concluding that DYS could not continue to hold him, and that the judge had the discretion to order that he be held in DYS custody on the assault charge notwithstanding that he also has been charged with murder and even though the two indictments have been joined. The single justice denied the petition, and the defendant appealed.

2. Discussion. a. Standard of review. We review a decision of a single justice pursuant to G. L. c. 211, § 3, for clear error of law or abuse of discretion. See Commonwealth v. Herring, 489 Mass. 569, 573 (2022); Brangan v. Commonwealth, 477 Mass. 691, 697 (2017). Where relief is sought from a Superior

Court judge's bail order, "[w]e must also consider the propriety of the Superior Court judge's underlying . . . order." Brangan, supra. "In reviewing both the single justice's judgment and the bail judge's order, we must consider the legal rights at issue and independently determine and apply the law, without deference to their respective legal rulings." Id., citing Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 603 (2000).

b. Statutory interpretation. Questions of statutory interpretation are questions of law that we review de novo. Commonwealth v. Diggs, 475 Mass. 79, 81 (2016). "Our task is to interpret the statute according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated" (quotation and citation omitted). Id.

"[T]he meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the courts is to enforce it according to its terms." Commonwealth v. Soto, 476 Mass. 436, 438 (2017), quoting Commonwealth v. Dalton, 467 Mass. 555, 557 (2014). "Where the language is clear and unambiguous, it is to be given its ordinary meaning, . . . and it is conclusive as to

the intent of the Legislature" (quotations and citations omitted). Soto, supra.

General Laws c. 119, § 68, provides in relevant part:

"A person who at the time of the offense had attained the age of fourteen but had not attained the age of [eighteen], and who is charged with murder in the first or second degree and is held by the superior court for trial or continuance, or for indictment and trial, if unable to furnish bail, shall be committed by the court to the custody of the sheriff of the county in which the court is situated"

There is no dispute that under G. L. c. 119, § 68, a juvenile offender charged only with murder, and whom a Superior Court judge orders held pending trial,⁶ must be committed to the custody of the sheriff. The question here is whether the Legislature intended the addition of a nonmurder charge to give the Superior Court discretion it otherwise lacks to commit juvenile offenders charged with murder to the custody of DYS, rather than to the custody of the sheriff.

Nothing in the text of G. L. c. 119, § 68, indicates that the Legislature intended such a result. To the contrary, the language of G. L. c. 119, § 68, is clear: if a juvenile offender is charged with murder and held pending trial, he or

⁶ As with an adult defendant charged with murder in the first degree, a judge making a bail determination has the discretion to decide whether to release a juvenile offender charged with murder on personal recognizance, to set bail, or to order that the juvenile be held without bail pending trial. See Vasquez v. Commonwealth, 481 Mass. 747, 752-753 (2019).

she is to be committed to the custody of the sheriff. The language makes no exception for juvenile offenders who also are charged with nonmurder offenses, and we can conceive of no justification for providing enhanced protections for those who are facing additional charges.

This interpretation of the plain language of G. L. c. 119, § 68, also is consistent with our opinion in Soto, 476 Mass. at 439-440. There, we determined that the provisions of G. L. c. 119 that concern juvenile offenders who have been charged with murder reflect a "clear legislative intent that [such] juveniles . . . be treated as adults under the jurisdiction of the Superior Court." Id. at 439-440. See id. at 439 (under statutory framework, "juveniles charged with murder are not entitled to the benefit of [the] juvenile justice system"). We specifically referenced juvenile offenders charged with murder as a "class" of persons that the Legislature categorically intended to "exclude . . . from the protections afforded to all other juveniles charged with violations of the criminal law." Id., citing G. L. c. 119, § 53. We understood these provisions as grounded in a "public safety policy" the Legislature sought to advance by treating a juvenile offender who had been charged with murder "as an adult for the totality of the conduct related to the murder charge." Id. at 440. Thus, Soto reflects our understanding of this statutory framework as providing that

juvenile offenders charged with murder categorically are excluded from the benefits of the juvenile justice system, including when they also are charged with nonmurder offenses properly joined to the murder charge.

The defendant observes that a Superior Court judge may commit a juvenile offender to DYS under certain circumstances, such as when sentencing a juvenile offender who has been acquitted of murder but found guilty of a properly joined nonmurder offense. See G. L. c. 119, § 72B.⁷ See also Soto, 476 Mass. at 440 n.4, quoting Commonwealth v. Walczak, 463 Mass. 808, 827 (2012) (Lenk, J., concurring) (noting that statement that "'juveniles indicted for murder in any degree must be treated as adults in all respects' applies to the trial and . . . does not necessarily apply to sentencing"). The defendant argues on this basis that a Superior Court judge should have the discretion to commit a juvenile defendant to DYS custody while being held pretrial on a nonmurder charge, even where that charge is joined with a murder charge. The defendant emphasizes the broad discretion that Superior Court judges have

⁷ The Legislature's decision to have juvenile offenders who have been tried in the Superior Court for both murder and a nonmurder offense and have been acquitted of the murder charge sentenced for the nonmurder offense as they could have been sentenced had they been tried for that offense in the Juvenile Court, see G. L. c. 119, § 72B, is not to the contrary. In such circumstances, but for the murder charge, the juvenile would have been tried in the Juvenile Court in the first instance.

to set pretrial conditions of release, even where a defendant is charged with murder, see Vasquez v. Commonwealth, 481 Mass. 747, 752-753 (2019), and contends that such a result would be consistent with our opinion in Soto, 476 Mass at 441.

We are not persuaded. Pointing to the sentencing options available to a Superior Court judge after a juvenile defendant has been acquitted of murder -- including commitment to DYS -- does little to suggest that the Legislature intended to confer discretion on Superior Court judges to exercise the option of pretrial commitment to DYS for a juvenile offender appearing before them, where they will never have before them a juvenile offender charged with nonmurder offenses unless the juvenile offender also is charged with murder, see G. L. c. 119, § 74, and where the Legislature plainly has provided that juvenile offenders charged with murder are to be held pretrial, if at all, in the custody of the sheriff, see G. L. c. 119, § 68.

Finally, because we conclude that the language of G. L. c. 119, § 68, is unambiguous with respect to the pretrial detention of juvenile defendants charged with murder, the rule of lenity does not apply. See Commonwealth v. Williamson, 462 Mass. 676, 679 (2012), quoting Commonwealth v. Roucoulet, 413 Mass. 647, 652 (1992) (rule of lenity applies only where criminal statute plausibly can be found to be ambiguous).

3. Conclusion. In sum, we conclude that, where a juvenile defendant charged with murder and a nonmurder offense properly joined pursuant to Mass. R. Crim. P. 9 (a) is held by the Superior Court for trial, the plain language of G. L. c. 119, § 68, requires that the Superior Court judge commit the defendant to the custody of the sheriff. Accordingly, the single justice did not err or abuse his discretion in denying relief.

Judgment affirmed.