

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 2009-CA-30
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2008-CR-0633
v.	:	
	:	
ROBERT D. GRIMES	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 5th day of November, 2010.

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FAIN, J.

{¶ 1} Defendant-appellant Robert Grimes appeals from his conviction and sentence for Involuntary Manslaughter and Tampering with Evidence, following a guilty plea. Grimes, a juvenile, argues that the Juvenile Division of the Greene County Common Pleas Court, which originally had jurisdiction, erred both in finding

probable cause to believe that he had committed the acts of which he was accused and in finding that he was not amenable to rehabilitation in the juvenile court system.

We conclude that the juvenile court did not abuse its discretion in making those findings and in ordering the case transferred to the General Division. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 2} On Mother's Day in 2008, Marco Porter and his cousin Jason Allen went to their grandmother's Xenia home. Their grandmother was not home, so the men visited a friend who lived nearby, Alicia Smith. Some time after Porter and Allen arrived at Smith's, Grimes and Sanches Lovett, aka Spice, knocked at the door.

Allen and Porter had been having "problems" with Grimes and Lovett for nearly a year. Lovett saw the men arrive at Smith's, and went over to try to convince them to leave Grimes alone. Grimes followed Lovett to Smith's house.

{¶ 3} Lovett told Allen that he needed to speak with him outside. As Allen went outside, he signaled to Porter to come as well. Allen admitted that once on the porch he became scared and hit Lovett. Allen and Lovett agreed that there was a physical and verbal altercation between them, while a similar altercation was taking place beside them, between Porter and Grimes. Allen saw a flash and heard a gunshot next to him and ran from the scene but realized that Porter was not with him. As he returned to Smith's house, he heard her screaming for someone to leave. Allen found Porter lying face down on the ground in front of Smith's house.

{¶ 4} When Lovett heard the gunshot, he looked up from his fight with Allen

and saw Grimes holding a gun in his raised hand. Grimes lowered his arm, tucked the gun into his pants, and ran away. Smith came out of the house screaming for them all to go, and she pushed Porter off of the porch. Lovett ran away.

{¶ 5} The gun was not recovered. Lovett testified that he overheard Grimes talking to someone on the telephone the day after the shooting. Grimes told the person to leave the gun where it was hidden.

{¶ 6} The coroner explained that Porter sustained gunshot wounds to the chest and arm. The shot to the back of Porter's forearm was a non-contact, defensive wound. The shot to the chest was a contact wound, and the bullet penetrated Porter's lung and heart. The coroner concluded that the cause of Porter's death was the contact gunshot wound to the chest.

{¶ 7} The day after the shooting, a complaint was filed in the Juvenile Division of the Greene County Common Pleas Court alleging Grimes to be delinquent for committing acts that, if committed by an adult, would constitute the offense of Having Weapons While Under Disability. The following month, a complaint was filed adding Murder and Attempted Murder to the allegations. The State filed a motion pursuant to Juv.R. 30, seeking to have the case transferred to the General Division of the Common Pleas Court, for Grimes to be tried as an adult.

{¶ 8} The juvenile court found that Grimes was fifteen years old on the date of the offense and that there was probable cause to believe that he had committed the acts charged, all of which would be felonies if committed by an adult. The case was referred for investigation pursuant to Juv.R. 30(C), and an amenability hearing was scheduled. Following that hearing, the juvenile court concluded that Grimes

was not amenable to rehabilitation in the juvenile court system and ordered the case transferred to the General Division.

{¶ 9} Grimes was indicted on one count each of Murder and Attempted Murder and two counts of Felonious Assault, all with gun specifications. He was also indicted on one count of Tampering with Evidence. Grimes pled guilty to Tampering With Evidence and to a reduced charge of Involuntary Manslaughter, with a firearm specification. The trial court sentenced him to five years for Involuntary Manslaughter, to five years for Tampering with Evidence, and one year for the firearm specification, to be served consecutively, for an aggregate sentence of eleven years in prison.

{¶ 10} From his conviction and sentence, Grimes appeals.

II

{¶ 11} Grimes's First Assignment of Error is as follows:

{¶ 12} "THE JUVENILE DIVISION OF COMMON PLEAS COURT IMPROPERLY RELINQUISHED JURISDICTION OVER THE CHARGES AGAINST THE JUVENILE APPELLANT WHERE PROBABLE CAUSE WAS NOT ESTABLISHED AND THEREFORE THE GENERAL DIVISION OF COMMON PLEAS COURT LACKED JURISDICTION OVER THE JUVENILE APPELLANT."

{¶ 13} In his First Assignment of Error, Grimes claims that the juvenile court erred in relinquishing jurisdiction to the General Division, because there is no probable cause to believe that he committed the acts of which he was accused.

"The Juvenile Division of the Court of Common Pleas has exclusive original

jurisdiction under the Ohio Revised Code concerning any child who * * * is alleged to be a delinquent child for committing an act that would be an offense if committed by an adult. R.C. 2151.23(A)(1); 2152.03; *State v. Wilson* (1995), 73 Ohio St.3d 40, 43 [1995-Ohio-217]. Before such an individual may be tried as an adult, the matter must be bound over by the Juvenile Division to the General Division pursuant to R.C. 2152.12 and Juv.R. 30." *State v. Brown*, Clark App. No. 2005-CA-96, 2006-Ohio-4393, ¶9.

{¶ 14} A juvenile court's relinquishment of jurisdiction in a discretionary transfer proceeding pursuant to R.C. 2152.12(B) is reviewed under an abuse of discretion standard. *State v. Flagg*, Cuyahoga App. Nos. 93248 & 93249, 2010-Ohio-4247, ¶26, citing *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307. The abuse of discretion standard is defined as "[a]n appellate court's standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal, or unsupported by the evidence." *State v. Boles*, Montgomery App. No. 23037, 2010-Ohio-278, ¶18, quoting Black's Law Dictionary, Eighth Edition (2004), at 11.

{¶ 15} In a discretionary transfer proceeding, the juvenile court must first determine the age of the juvenile and whether probable cause exists to believe that he committed the alleged act. R.C. 2152.12(B)(1) and (2). The court must then determine whether the juvenile is amenable to rehabilitation within the juvenile justice system and whether the juvenile should be subject to adult sanctions in order to protect the community. R.C. 2152.12(B)(3). See, also Juv.R. 30.

{¶ 16} "At a probable cause hearing, the state need not establish every element beyond a reasonable doubt, but must simply present evidence of 'probable

cause to believe' that the defendant committed the acts. R.C. 2151.26(B); Juv.R. 30 (A) and (B). Furthermore, the standard of probable cause is a fair probability, not a prima facie showing, of criminal activity. *State v. George* (1989), 100 Ohio App.3d 688, 691." *State v. Franklin* (March 23, 2001), Montgomery App. No. 18260. See, also, *State v. Iocona*, 93 Ohio St.3d 83, 93, 2001-Ohio-1292.

{¶ 17} The juvenile complaints filed against Grimes alleged him to be delinquent by reason of having committed Murder, and Attempted Murder, both in violation of R.C. 2903.02(A), and for Having a Weapon While Under Disability, in violation of R.C. 2923.13(A)(1).

{¶ 18} Regarding the Murder and Attempted Murder charges, the State alleged that Grimes purposely caused or attempted to cause Porter's death. Grimes argues that the State failed to offer evidence that he acted purposefully in causing or attempting to cause Porter's death.

{¶ 19} The coroner explained that Porter was killed by a direct contact gunshot wound to the chest. The State argues, in part, that the contact nature of the wound indicates the purposefulness of the act. Furthermore, only four people were present at the time of the shooting: Grimes, Porter, Lovett, and Allen. Lovett and Allen agreed that they were fighting with each other, and that neither of them had either seen the other with a gun, or seen the other shoot Porter. Moreover, Lovett, Grimes's friend, testified that when he heard the shots, he looked up in time to see Grimes lower his hand, in which he held a gun that looked like one Lovett had seen in Grimes's possession on previous occasions, hide the gun in his pants, and flee from the scene. The fact that Grimes later claimed that the shooting had been an

accident does not preclude the trial court from finding probable cause.

{¶ 20} Regarding the Weapons Under Disability charge, the State alleged that Grimes knowingly acquired, had, carried, or used a firearm while a fugitive from justice. The State's evidence shows that on the day in question Grimes was in possession of a handgun that he used to shoot Porter, then hid in his pants and carried away from the scene. Allen testified that neither he nor Porter were armed, nor were they in the habit of carrying guns. Lovett testified that he was not armed.

Furthermore, although Lovett had not seen Grimes with a gun that day, he knew Grimes to carry a gun in the past. In fact, he had seen Grimes in possession of the same handgun, or a very similar one, on previous occasions.

{¶ 21} Grimes also claims that there was no evidence that he was under a disability. To the contrary, both the court's own records and the testimony of Grimes's probation officer, Sheena Nipper, reveal that, at the time of the shooting, there was a warrant outstanding for Grimes's arrest for his failure to appear as ordered for a previous juvenile court hearing on other charges. He was, therefore, a fugitive from justice within the contemplation of R.C. 2923.13(A)(1). See *State v. Cherry*, 171 Ohio App.3d 375, 2008-Ohio-2133, ¶ 21, appeal after new sentencing hearing, 2008-Ohio-4388, motion for delayed appeal denied, 119 Ohio St.3rd 1441, 2008-Ohio-4487 (person is fugitive from justice when he: has committed an offense; is aware that he is being sought by police in connection with that offense; and, being aware that he is being sought by police, takes some affirmative action to elude detection by police).

{¶ 22} Accordingly, the juvenile court did not abuse its discretion in finding

probable cause to believe that Grimes had committed the acts of which he was accused. Grimes's First Assignment of Error is overruled.

III

{¶ 23} Grimes's Second Assignment of Error is as follows:

{¶ 24} "THE JUVENILE DIVISION OF COMMON PLEAS COURT IMPROPERLY RELINQUISHED JURISDICTION OVER THE CHARGES AGAINST THE JUVENILE APPELLANT WHERE THE COURT ABUSED ITS DISCRETION IN DETERMINING THAT THE JUVENILE SHOULD BE TRANSFERRED EVEN IF THERE WAS PROBABLE CAUSE TO BELIEVE THE CHILD COMMITTED THE ACT CHARGED."

{¶ 25} In his Second Assignment of Error, Grimes contends that the trial court erred in finding that he is not amenable to rehabilitation in the juvenile justice system.

A juvenile court's amenability finding lies within the court's sound discretion. *State v. Morrow* (Feb. 18, 2000), Montgomery App. No. 17750, citing *State v. Carmichael* (1973), 35 Ohio St.2d 1, paragraphs one and two of the syllabus; *State v. Douglas* (1985), 20 Ohio St.3d 34, 37.

{¶ 26} Revised Code Section 2952.12(D) sets forth eight factors to consider in favor of transfer of a juvenile to the General Division, while R.C. 2952.12(E) sets forth eight factors to consider as relevant against transfer. Neither list of factors is all-inclusive. In this case, the juvenile court found that the factors weighing in favor of transfer outweigh the factors against.

{¶ 27} The juvenile court found the following factors weighing in favor of

transfer: the victim died as a result of the shooting (D)(1); Grimes used a firearm to commit the offense (D)(5); at the time of the offense, Grimes had been on community control continuously for three years, and he was awaiting disposition on another adjudication (D)(6); Grimes had been ordered into numerous previous programs, yet the pattern of his delinquent behavior escalated (D)(7); and there is insufficient time to rehabilitate Grimes in the juvenile justice system, due to the nature of his offense and his previous resistance to rehabilitative programs (D)(8).

{¶ 28} The court pointed to four additional reasons for transfer. The court explained, “A. Robert’s interest in and involvement with firearms poses a greater risk to community safety. In addition to Robert using a weapon in the current charge, the property he obtained in the receiving stolen property charge * * * included two shotguns. Further, his probation officer once found a brochure for firearms in Robert’s school locker. B. The victim was shot twice, making the act more heinous. One of the shots was a close contact wound to the chest. The nature of the wounds reflect Robert’s intent. He is less likely to respond to what the juvenile system has to offer. C. Robert’s school behavior [an ongoing pattern of detentions, Saturday schools, suspensions, and recommendations for expulsion] reflects that, in yet another arena designed to teach children the importance of rules and respect for peers, Robert defies authority and is not responsive to escalating sanctions. D. At the time of the alleged act, Robert was eluding an arrest warrant issued by the Court, related to a probation violation. Robert is not fazed by the juvenile justice system.”

{¶ 29} The trial court found only two factors weighing against transfer. First,

Grimes was not the principal actor; Lovett had initiated the contact with Porter and Allen (E)(3). And second, although Grimes is of an average size for someone his age, he is psychologically immature (E)(6).

{¶ 30} Furthermore, the court pointed out that although the psychologist, Dr. Layh, had opined that Grimes should not be transferred, the doctor explained that the primary reason for his opinion was the doctor's reliance upon Grimes's false claims that he had not been provided with opportunities for rehabilitation. Nevertheless, Dr. Layh agreed that past resistance to therapeutic interventions would make it less likely that future attempts could succeed.

{¶ 31} To the extent that Grimes argues in his brief that he was not truly afforded the opportunity to take advantage of any of the many services offered, because he is too young to drive, this is speculative. While there was mention that Grimes's parents are frequently unavailable to him, there is no evidence in the record that public transportation was unavailable, or that Grimes lacked other family members or friends willing to provide him with transportation. For example, there was mention of a godmother, with whom Grimes often lived, who may have been able to transport him. Similarly, thirty-year-old Lovett described himself as being as close to Grimes as an older brother.

{¶ 32} We conclude that the trial court did not abuse its discretion in finding that Grimes is not amenable to rehabilitation in the juvenile justice system. Grimes's Second Assignment of Error is overruled.

{¶ 33} Both of Grimes's assignments of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and BROGAN, J., concur.

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