IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF:	:	DOCKET NO. JV 159-2011
N.M.J., A JUVENILE	:	JUVENILE

O P I N I O N AND O R D E R

AND NOW, this 21st day of November, 2011, upon consideration of the juvenile's Motion for Authorization of Costs and Fees for Forensic Psychiatric Evaluation, it is hereby ORDERED and DIRECTED that the motion is DENIED. This Court finds that the statutory defense of insanity cannot be raised properly in juvenile delinquency proceedings, and, therefore, that the costs and fees of a psychiatric evaluation that would be used to assert this insanity defense cannot be allocated to the county or any other appropriate agency.

The Juvenile Act, 42 Pa.C.S.A. §§ 6301-6375, governs juvenile proceedings within the Commonwealth; these proceedings focus upon adjudications of delinquency and dependency. In this matter, the Commonwealth has alleged that N.M.J. is a delinquent child who committed a delinquent act and is in need of treatment, supervision, or rehabilitation. This Court's Opinion and Order, therefore, applies to juvenile delinquency proceedings.

According to the Juvenile Act, a delinquent child is "[a] child ten years of age or older whom the court has found to have committed a delinquent act and is in need of treatment, supervision, or rehabilitation." 42 Pa.C.S.A. § 6302. A delinquent act is "an act designated as a crime under the laws of this Commonwealth," but the Act lists a number of crimes that are not considered to be delinquent acts if committed by a juvenile.[1] *Id*. An adjudication of delinquency is not considered to be a conviction. 42 Pa.C.S.A. § 6354(a).

[1] None of the enumerated exceptions are applicable in N.M.J.'s case. The Commonwealth has alleged that N.M.J. committed the following delinquent acts: Riot (18 Pa.C.S.A. § 5501(A)(1)), Aggravated Assault (18 Pa.C.S.A. § 2702(A)(5)), Terroristic Threats (18 Pa.C.S.A. § 2706(A)(1)), Simple Assault (18 Pa.C.S.A. § 2701(A)(1)), Disorderly Conduct (18 Pa.C.S.A. § 5503(A)(1)), and Harassment (18 Pa.C.S.A. § 2709(A)(1)).

This Court finds that our Superior Court's *en banc* decision in *In the Interest of G.T.*, 597 A.2d 638 (Pa. Super. Ct. 1991), supports the conclusion that the insanity defense cannot be asserted by a juvenile in a delinquency hearing. In *In the Interest of G.T.*, the Superior Court had to decide whether the common law presumptions regarding a juvenile's capacity to commit a criminal act were relevant in delinquency proceedings.[2] *Id*. at 640. In that case, the Superior Court held that the common law concept of capacity is irrelevant in the determination of an act of delinquency because the "primary purpose of the juvenile system is not to punish children for their crimes but to ascertain whether problems existed and if so, whether they could be rectified." *Id.* at 641. The Superior Court stated:

> [d]elinquency proceedings are not criminal in nature but are intended to address the special problems of children who have engaged in aberrant behavior disclosing a need for special treatment. Therefore, the defense of infancy, created to protect children from retribution in recognition of their inability to differentiate right and from wrong, *is irrelevant to a determination* regarding a juvenile's amenability to treatment, rehabilitation and supervision.

Id. at 641-42 (emphasis added). Certainly, this reasoning is equally applicable to the insanity defense.[3]

Additionally, in *In the Interest of G.T.*, our Superior Court opined that a defense should be codified within the Juvenile Act in order to be asserted in delinquency proceedings. *Id.* at 642. The Superior Court adopted the rationale of the Supreme Court of Connecticut's decision in *In re Tyvonne*, 558 A.2d 661 (Conn. 1989), stating:

> in the absence of legislation codifying or adopting the defense, incapacity is not a defense in delinquency proceedings…. because a delinquency adjudication is not a criminal conviction, it is unnecessary to determine whether the juvenile understood

[2] In that case, a juvenile appealed the lower court's denial of admission of a stipulation of counsel that a court psychologist was of the opinion that the thirteen year-old juvenile had the mental capacity of a nine and one-half year-old child. *Id*.

[3] This Court notes that the Superior Court cited to the Supreme Court of Connecticut's comparison of the common law infancy defense to the insanity defense in *In re Tyvonne*, 558 A.2d 661 (Conn. 1989). 597 A.2d at 641.

> the moral implications of his or her behavior. In addition, … the defense would frustrate the remedial purposes of the juvenile justice legislation.

597 A.2d at 642 (citing 558 A.2d at 666). In *In re Tyvonne*, the Supreme Court of Connecticut opined:

> the defense (of infancy) inevitably would exclude those children most in need of guidance from a system designed to instill socially responsible behavior. To construe the legislature's silence as indicating an intent to preserve the infancy defense in delinquency proceedings is unwarranted in light of the legislation's obvious and singular remedial objectives.

556 A.2d at 666 (citations omitted). This Court believes that both our Superior Court and the Supreme Court of Connecticut's rationale are applicable to N.M.J.'s assertion of the insanity defense.

This Court believes that the insanity defense cannot be raised properly in the adjudicatory phase of juvenile proceedings. Insanity is a statutory defense; it is articulated within the Commonwealth's Crimes Code. 18 Pa.C.S. § 315.[4] Juvenile proceedings, however, are governed by the Juvenile Act. The adjudication of a juvenile in a delinquency hearing is not a criminal procedure provided for within Crimes Code. Within the confines of the Juvenile Act, the legislature did not provide for the statutory defense of insanity. However, in the Juvenile Act, the legislature specified the actions to be taken by a court when evidence indicates that the child may be subject to mental illness or retardation.[5] This Court believes that if the legislature intended for juveniles to have the ability to raise the

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[4] This Court notes that in *Medina v. California*, 505 U.S. 437, 449 (1992), the Supreme Court stated that "while the Due Process Clause affords an incompetent defendant the right not to be tried, we have not said that the Constitution requires the States to recognize the insanity defense." (citations omitted).

[5] 42 Pa.C.S. § 6356 (disposition of mentally ill or mentally retarded child) provides:

> [i]f, at a dispositional hearing of a child found to be a delinquent or at any hearing, the evidence indicates that the child may be subject to commitment or detention under the provisions of the act of October 20, 1966, known as the "Mental Health and Mental Retardation Act of 1966," or the act of July 9, 1976, known as the "Mental Health Procedures Act," the court shall proceed under the provisions of the appropriate statute.

(citations omitted).

defense of insanity during juvenile proceedings that the legislature would have provided for such a defense within the Juvenile Act. *See* 597 A.2d at 642.

Additionally, this Court believes that the purposes and procedures of the Juvenile Act and the Crimes Code are fundamentally different and require different consideration by this Court. The Juvenile Act provides "programs of supervision, care and rehabilitation" for children who have committed delinquent acts. 42 Pa.C.S.A. § 6301(b)(2); *see In the Interest of Leonardo*, 436 A.2d 685 (Pa. Super. Ct. 1981); *see In the Interest of E.J.*, 579 A.2d 960, 963 (Pa. Super. Ct. 1990) (Olszewski, J., concurring). Juvenile proceedings seek "treatment, reformation and rehabilitation, and not to punish," while at least one of the goals of the criminal justice system is punishment; it is "in this criminal respect… [that] the juvenile system differs from the adult criminal system." 436 A.2d at 687 (citations omitted).

Additionally, juvenile procedure differs from adult criminal trial procedure. In *In the Interest of J.H.*, 737 A.2d 275 (Pa. Super. Ct. 1999), our Superior Court "declined to conclude that a juvenile adjudication has become equivalent to an adult criminal proceeding and observed [that] juvenile proceedings remain intimate, informal and protective in nature." *Id*. at 278. Furthermore, our Superior Court opined:

> [u]nder the Juvenile Act, juveniles are not charged with crimes; they are charged with committing delinquent acts. They do not have a trial; they have an adjudicatory hearing. If the charges are substantiated, they are not convicted; they are adjudicated delinquent.

Id. Even though the adjudicatory phase of a delinquency hearing is not a criminal procedure, the Supreme Court has mandated particular procedural protections that must be afforded to juveniles in these hearings. *In re Gault*, 387 U.S. 1 (1967) (juveniles must be provided with notice of charges against them, the right to counsel, the rights of confrontation and examination, and the privilege against self-incrimination); *In re Winship*, 397 U.S. 358

(1970) (the commission of a delinquent act must be proved beyond a reasonable doubt); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (plurality) (the right to a jury trial is not required in the adjudicatory phase of a delinquency proceeding). The Commonwealth codified these due process requirements at 42 Pa.C.S.A. §§ 6337-38 and 6341.

In short, this Court holds that the defense of insanity cannot be raised properly in the adjudicatory phase of a delinquency hearing. Therefore, the assignment of costs and fees for an evaluation to enable the juvenile to assert this defense is also improper. N.M.J.'s motion is DENIED, and the insanity defense is STRICKEN.

BY THE COURT,

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Date Richard A. Gray, J.

RAG/abn

cc: John P. Pietrovito, Esquire
Christopher M. Williams, Esquire
W. Jeffrey Yates, Esquire
Juvenile Probation
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