

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

**IN RE:** : **No. JV-8-2012**  
:  
**D.F.** : **JUVENILE DIVISION**

**OPINION AND ORDER**

On January 11, 2012, a Petition was filed against D.F., a minor, alleging delinquency based on conduct which, when committed by an adult, is designated as the crimes of Criminal Trespass, a felony of the second degree; Theft by Unlawful Taking, a misdemeanor of the third degree; and Burglary, a felony of the second degree.

The Petition alleges that during the week of October 17, 2011 through October 20, 2011 at different dates and times, the juvenile and an accomplice broke into the Jersey Shore Lions Club concession stand and stole numerous items of property.

On January 25, 2012, an additional Petition was filed against the juvenile at JV-22-2012 alleging delinquency based on conduct which committed by an adult is designated as the crime of Retail Theft, a misdemeanor of the second degree.

The Petition alleges that on November 17, 2011, the juvenile and an accomplice stole two boxes of Coricidin, valued at approximately \$13.00 without paying for them. Coricidin is a brand name cold medicine which is sometimes used by unsuspecting individuals to get "high." Unfortunately for the individual, its effects, which include drowsiness, dizziness, headaches, dry mouth and loss of appetite, often counteract the high desired.

Following the filing of the Petitions, and pursuant to 42 Pa. C.S.A. § 6355, the

Commonwealth filed a Motion to Transfer the Criminal Trespass Petition at JV-8-2012 to the Court of Common Pleas. A hearing on the Motion to Transfer was held on March 1, 2012. Present at the hearing were Stacey Losell, a Juvenile Probation Officer, the juvenile, the juvenile's father and the juvenile's mother. The juvenile was represented by counsel.

The parties stipulated that at the time of the alleged conduct the juvenile was 14 or more years of age. Additionally, the parties stipulated that the hearing was held in conformity with the Juvenile Act, that notice in writing of the time, place and purpose of the hearing was given to the child and his parents at least three (3) days before the hearing, that there was a prima facie case that the child committed the delinquent acts alleged, that at least one of the delinquent acts would be considered a felony if committed by an adult and, that there are reasonable grounds to believe that the child is not committable to an institution for the mentally retarded or mentally ill. All of these stipulations addressed requisites for transfer to criminal proceedings pursuant to 42 Pa. C.S.A. § 6355 (a).

Thus, the only issue to be determined at the hearing, as agreed by the parties, was whether there are reasonable grounds to believe that the public interest would be served by the transfer of the case for criminal prosecution pursuant to 42 Pa. C.S.A. § 6355 (a) (4) (iii).

The stated purposes of the Juvenile Act include the supervision, care and rehabilitation of minors who, although having committed delinquent acts, would benefit less from an adult criminal sentence. Commonwealth v. Jackson, 555 Pa. 37, 722 A.2d 1030, 1032 (Pa 1999); see also 42 Pa. C.S. § 6301 (b) (2). Where, however, the circumstances

warrant such, a juvenile's case may be transferred to adult criminal court.

In deciding whether to transfer a juvenile's case to adult criminal court, the juvenile court must consider all of the statutory factors. Commonwealth v. Berry, 785 A.2d 994, 997 (Pa. Super. 2001).

The statute mandates, among other things, that there must be reasonable grounds to believe that the public interest would be served by the transfer of the case for criminal prosecution. 42 Pa. C.S.A. § 6355 (a) (4) (iii).

In determining the public interest, the Court must consider the following factors:

- (A) the impact of the offense on the victim or victims;
- (B) the impact of the offense on the community;
- (C) the threat to the safety of the public or any individual posed by the child;
- (D) the nature and circumstances of the offense allegedly committed by the child;
- (E) the degree of the child's culpability;
- (F) the adequacy and duration of dispositional alternatives available under the Juvenile Act, and in the adult criminal justice system; and
- (G) whether the child is amenable to treatment, supervision or rehabilitation as a juvenile considering the following factors:
  - (I) age;
  - (II) mental capacity;
  - (III) maturity;
  - (IV) the degree of criminal sophistication exhibited by the child;
  - (V) previous records, if any;
  - (VI) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts of the juvenile court to rehabilitate the child;
  - (VII) whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;
  - (VIII) probation or institutional reports, if any; [and]

(IX) any other relevant factors.

42 Pa. C.S.A. § 6355 (a) (4) (iii).

The Commonwealth bears the burden to establish that these statutory prerequisites for transfer of the juvenile to adult court have been met. Commonwealth v. McGinnis, 450 Pa. Super. 310, 675 A.2d 1282, 1286 (Pa. Super. 1996). Certification obviously depends on a complex balancing of numerous factors. Commonwealth v. Saez, 925 A.2d 776, 781 (Pa. Super. 2007); citing Commonwealth v. McDonald, 582 A.2d 328, 335 (Pa. Super. 1991). In reviewing all of the evidence, the Court finds that the Commonwealth has, in fact, met its burden.

While no direct testimony was presented with respect to the impact of the offense on the victim or on the community, the Court easily concludes that the impact was substantial. The victim is the Jersey Shore Lion's Club. This is part of a large service club organization. The Lion's Club assists local communities through numerous types of volunteer work. The impact of such an offense on a volunteer organization is often times far worse than the impact on a private citizen.

Unfortunately, the juvenile continues to be a threat to the safety of the public. Stacey Losell, a Lycoming County Juvenile Probation officer first began supervising the juvenile in October 2010. Despite exhausting all available community based programs, the juvenile has continued with his criminal behaviors. Over a span of approximately two years, the Defendant has been adjudicated delinquent on the following charges: theft, a misdemeanor of the first degree; a summary underage drinking; fleeing and eluding, felony

of the third degree; driving under the influence, an ungraded misdemeanor; receiving stolen property, a misdemeanor of the first degree; possession of a controlled substance, an ungraded misdemeanor; and retail theft, a misdemeanor of the second degree.

Over this two-year period from approximately July of 2009 through July of 2011, Defendant has exhausted all available community based programs including in-home multiple systemic therapy (two times); Tioga County Detention Center (three times); Lycoming County Shelter Care (three times); Abraxas Leadership Development Program (one time); Susquehanna Day Treatment (one time); ACT Program (one time); and the Lycoming County Juvenile Drug Court Program (one time).

He has been assessed for mental health deficiencies as well as drug and alcohol issues. He spent 120 days at the Cornell Abraxas Boot Camp Program. His Juvenile Drug Court tenure was replete with alcohol use, disruptive behaviors, failure to comply with rules, behavioral problems and “programmatically violations.”

During this two-year period, he has also been required to do PATH weekends.

Despite these lengthy, costly and substantial interventions, attempting to identify and address the juvenile’s behavioral problems, he has continued committing delinquent acts. The juvenile presents himself as an 18-year old who chooses, in the face of escalating consequences and despite extensive attempts at rehabilitation, to continue an anti-social pattern of behavior.

While the nature and circumstances of the offenses allegedly committed by the juvenile do not involve personal injury, what concerns the Court is that the juvenile

displayed little, if any, regard for the property of others, as well as a complete disregard to a benevolent organization.

With respect to the juvenile's culpability in this particular matter, it is evident to the Court that he was not the most culpable. Indeed, it appears that he broke into the concession stand only once at the urging of a fellow student.

When the juvenile was in the Abraxas Leadership Development Program, he was assessed by a psychiatrist. No mental health deficiencies were noted. On the contrary, the juvenile was identified as having "just behavioral issues." The dispositional alternatives available under the Juvenile Act have failed miserably in addressing the juvenile's "behavioral issues." As testified to by Ms. Losell, in a structured environment the juvenile does well but once he is left to "his own devices" he reverts back to criminal and self-destructive behaviors.

The juvenile's choice to steal and use Coricidin is a small but powerful example of the juvenile's self-destructive and anti-social behaviors.

Coricidin is an antihistamine cough and cold suppressant for people with high blood pressure. The purpose in taking the Coricidin was for the juvenile to get high. Unfortunately, because of the chemical ingredients, its affects are usually the opposite of what the user intends. Indeed, taking Coricidin in the amount expected by an abuser looking to get high can result in destruction of one's liver, poisoning, brain damage and, on a rare occasion, death.

In conjunction with this, the juvenile's demeanor at the certification hearing

favors transfers to criminal court. He appeared disinterested, lethargic and detached. He expressed little concern, if any, about the Court's decision. He failed to adequately answer or address the Court's concerns about his behavior. In sum, the Court easily concludes that he simply did not accept responsibility for his past behaviors, cared less about where he was headed, and had no desire to change his behaviors.

Most importantly, given the relevant statutory factors, the Court concludes that the juvenile is not amenable to treatment, supervision or rehabilitation. He is presently 18 years old, his academic record is poor and he withdrew from high school after his 18<sup>th</sup> birthday. He was not on track to graduate. Since withdrawing, he has done little if anything to improve his lot in life. He has never held a job while under supervision and is not working now.

He certainly has the mental capacity to understand the nature of his misconduct as there are no mental health concerns, he was never on learning support, and he was never the subject of an Individualized Education Plan (IEP).

He continued to be delinquent and all previous attempts by the Juvenile Court to rehabilitate him have failed. Quite candidly, nothing is left. Both of the juvenile parents passionately urged the Court not to transfer D.F. to adult court. They identified his issues as being drug and/or alcohol related along with "stupid" decision making and "a complete lack of maturity." They asserted that he needs guidance and structure as evidenced by how well he performed in a structured environment in the past. They asserted that he needs to learn how to cope with "real life" and that he is amenable to treatment, supervision and

rehabilitation either through the Youth Build Program or through an inpatient rehabilitation program.

While the Court sympathizes with the parents, it cannot agree. The adult sentencing system has a primary focus on punishment and/or retribution but allows for the fulfillment of other sentencing purposes including rehabilitation, deterrence and incapacitation. 204 Pa. Code § 303.11. Indeed, the lower sentencing levels which would apply to D.F. provide for minimal control necessary to fulfill Court ordered obligations as well as treatment for drug dependent offenders. 204 Pa. Code § 303.11.

D.F. is in fact no longer a juvenile. He is 18 years of age and is now legally an adult. Unfortunately, while he chose not to graduate from high school, he has, in fact, chosen to graduate from the juvenile system of justice to the adult criminal system of justice. The primary focus can no longer be on his rehabilitation or treatment. The primary focus will be on punishment and protecting society. Treatment will be made available to him but no longer be mandated.



**ORDER**

**AND NOW**, this \_\_\_\_ day of March 2012, following a hearing and argument, the Commonwealth's Motion for Certification to Adult Court is **GRANTED**. This matter is set for arraignment on **April 2, 2012 at 8:30 a.m. in Courtroom No. 1** of the Lycoming County Courthouse before the Honorable President Judge Nancy L. Butts. Bail shall be set at such time and date.

By The Court,

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Marc F. Lovecchio, Judge

cc: CA  
DA  
Don Martino, Esquire  
JPO, Stacey Losell  
The Honorable Nancy L. Butts  
Gary Weber, Esquire (Lycoming Reporter)  
Work File