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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICAH PRESSLEY,

APPELLANT

APPELLATE CASE NO. 2023-001799

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in sentencing Appellant, who was fifteen (15) years old at the time of the offense, to forty (40) years in prison for murder without conducting an individualized sentencing hearing to consider the mitigating factors of youth required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), in violation of the Eighth Amendment's prohibition on cruel and unusual punishments and South Carolina Constitution's article I, section 15 prohibition against cruel, corporal, or unusual punishment?

2. Did the family court judge err in refusing to grant a continuance in order to meet the statutory requirement of a full investigation when mental health records were not obtained prior to the waiver hearing and not provided to the evaluator?

3. Did the family court judge err in transferring jurisdiction to the general sessions court when the record fails to support the judge's finding that the "possibility of rehabilitation does not overcome the overwhelming evidence which favors transferring the charges to general sessions?"

STATEMENT OF THE CASE

On May 29, 2022, the Conway Police Department referred charges of burglary first degree and murder against Appellant, Micah Pressley, a juvenile, and a pickup order was issued. The juvenile was picked up and detained on May 31, 2022. On January 27, 2023, a pre-adjudicatory transfer (waiver) hearing was held before the Honorable Melissa M. Frazier. Ralph Wilson, Senior, represented the juvenile. Nancy Livesay and Christopher Helms represented the State. In a written order signed February 7, 2023, Judge Frazier waived jurisdiction of the Family Court and transferred the case to General Sessions Court. (R. p. ** - 11 page waiver hearing order).

In March of 2023, the Horry County Grand Jury indicted Appellant for murder and burglary first degree, indictments #2023-GS-26-0414, 0416. (R. p. **). On November 6, 2023, Appellant and his co-defendant, Fanotti Neal, proceeded to jury trial before the Honorable William Seals. Ralph Wilson, Senior represented Appellant. David Rigney represented the co-defendant. Adam Harrelson and Nancy Livesay represented the State. At the close of the State's case Judge Seals directed a verdict of acquittal for the burglary charge. (Tr. p. 744, lines 11-12). The jury returned a verdict of guilty of murder. Judge Seals sentenced Appellant and his co-defendant to forty (40) years in prison. (R. p. ** sentencing sheet). This appeal follows.

STATEMENT OF FACTS

The jury found the juvenile appellant and his co-defendant, Fanotti Neal, guilty in the fatal shooting of Joshua McPherson in an apartment in Conway on May 29, 2022. Marion Robinson testified that on the night of the shooting he and his friends had returned to the apartment after they had been "on the strip" to celebrate the deceased's brother, Jalen's birthday. (Tr. p. 232, lines 2-8). Video surveillance from the apartment complex shows the group entering the apartment. (State's Exhibit #50 at 3:25; 3:48). According to Marion, the group included Shakira, who lived at the apartment (Tr. p. 231, lines 21-22), and an unknown male, followed by Travion, Cameron, who also lived at the apartment, Jalen, the deceased, and Marion. (Tr. p. 245, line 16 – p. 246, 247, lines 1-25). Marion was the only witness of this group called to testify at trial. Marion testified that he and the deceased fell asleep in the living room. (Tr. p. 232, lines 4-8).

About two hours later the video surveillance shows, according to Marion, Appellant, the co-defendant, two females and another male entering the apartment. (Tr. p. 249, line 6 – p. 250, lines 1-16; State's Exhibit #50 at 5:42). Marion testified, "And then I woke up. It was Fanotti [the co-defendant]. He had gave me a fist bump. And then I went back to sleep. And then I woke up to the sound of, like two people tussling. And then when I opened my eyes, somebody in a black hoodie had shot Josh and they ran out the door." (Tr. p. 232, lines 9-13). Marion admitted that he initially only told the police about seeing the co-defendant. (Tr. p. 267, lines 12-15; p. 273, line 16 – p. 274, lines 1-3). Marion and the co-defendant worked together at the Blue Beacon Truck Wash. (Tr. p. 226, lines 15-18). Marion met Appellant once at a music video shoot about a month before the shooting. (Tr. p. 226, lines 19-25). The deceased and his brother were also in the music video. (Tr. p. 230, lines 5-9).

The video surveillance shows the two females and the male leaving the apartment after about ten minutes. (Tr. p. 256, lines 21-24; State's Exhibit #50 at 5:49). A short time later two males are seen running from the apartment. (State's Exhibit #50 at 5:51). Marion identified the two males as Appellant and the co-defendant. (Tr. p. 254, lines 15 – 24). Emergency medical personnel and law enforcement officers arrived at the apartment. A crime scene investigator testified that he recovered one shell casing and two firearms from inside the apartment. (Tr. p. 170, line 18 – p. 171, lines 1-25).

Officers executed a search warrant at an address in Florence and found a tan Glock 19X in the living room and a black Glock 19 in a backpack in a bedroom. (Tr. p. 392, line 3 – p. 393, line 1). Officers found a black Nike hooded sweatshirt, jeans, loose ammunition, and Appellant's high school ID card in another bedroom. (Tr. p. 393, lines 2-18). Paul Greer with SLED was qualified without objection as an expert in firearm identification. (Tr. p. 478, lines 12-17). Agent Greer compared two bullets removed from the body of the deceased and determined that the bullets were fired by two separate guns. (Tr. p. 479, line 3 – p. 480, lines 1-25).

The results of the comparison of the bullets to the firearms found in Florence were inconclusive. The agent opined, however, that one of the bullets could have been fired by the tan Glock 19X, serial number BRGD-733, and the other bullet could have been fired by the black Glock 19, serial number AFSH-329. (Tr. p. 483, line 15 – p. 484, lines 1-12). The results of the comparison with the shell casing were also inconclusive but the agent opined that the tan Glock 19X, serial number BRGD-733, could have fired that shell casing. (Tr. p. 485, lines 7-11). The agent testified that the black Glock 19, serial number AFSH-329, malfunctioned and could not eject the cartridge case. (Tr. p. 485, line 16 – p. 486, lines 1-25). The results of the comparison

of the bullets to one of the guns found in the apartment in Conway, SLED item #3, were inconclusive. The agent opined, however, that one of the bullets could have been fired by one of the guns found at the apartment, SLED item #3. (Tr. p. 500, line 2 – p. 501, lines 1-15). The agent testified that the second gun found at the apartment, SLED item #4, could not have fired either of the bullets. (Tr. p. 501, lines 19-21). Both guns found at the apartment were presumptive for the presence of blood. (Tr. p. 587, lines 17-25; p. 589, lines 18-25). At the time of trial it appears that testing of the blood had not been done. (Tr. p. 590, line 21 – p. 591, line 1).

ARGUMENTS

1. **The trial judge erred in sentencing Appellant, who was fifteen (15) years old at the time of the offense, to forty (40) years in prison for murder without conducting an individualized sentencing hearing to consider the mitigating factors of youth required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), in violation of the Eighth Amendment's prohibition on cruel and unusual punishments and South Carolina Constitution's article I, section 15 prohibition against cruel, corporal, or unusual punishment.**

STANDARD OF REVIEW

" 'When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments, the appellate court's standard of review extends *only to the correction of errors of law.* Therefore, this court will not disturb the circuit court's findings absent a manifest abuse of discretion. An abuse of discretion occurs when the circuit court's finding is based on an error of law or grounded in factual conclusions without evidentiary support.' State v. Finley, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) (emphasis added) (citations omitted)." State v. Mack, 441 S.C. 526, 535–36, 894 S.E.2d 820, 825 (Ct. App. 2023).

DISCUSSION

Appellant was fifteen years old at the time of the offense in May of 2022, and had not yet turned seventeen at the time of his trial in 2023. The sentencing hearing portion of the transcript for Appellant is less than four pages long. (Tr. p. 818, line 11 – p. 819, 820, 821, lines 1-14). The co-defendant, Fanotti Neal, was nineteen years old at the time of the offense. (Tr. p. 821, lines 16-17). The judge sentenced both defendants to forty (40) years in prison. (Tr. p. 822, lines 6-16).

The Eighth Amendment to the United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The South Carolina Constitution provides that, "Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained." S.C. Const. art. I, § 15.

In Miller v. Alabama, 567 U.S. 460, 479, 132 S. Ct. 2455, 2469, 183 L. Ed. 2d 407 (2012), the United States Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. In Aiken v. Byars, 410 S.C. 534, 540-541, 765 S.E.2d 572, 575-576 (2014), the South Carolina Supreme Court found that "Miller does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." In Aiken, the South Carolina Supreme Court held that the principles enunciated in Miller v. Alabama apply ". . . prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole." 410 S.C. at 545, 765 S.E.2d at 578. In a footnote the South Carolina Supreme Court wrote, ". . . for the purposes of this opinion, a juvenile was an individual under eighteen years of age." Aiken, 410 S.C. at 537 n.1, 765 S.E.2d at 573 n.1. The principles of Miller v. Alabama and Aiken v. Byars apply to Appellant because he was fifteen (15) years of age and was subject to a sentence of life without parole for murder.

Pursuant to Miller and Aiken, a sentencing court must consider at a hearing: (1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence"; (2) the "family and home environment" that surrounded the offender; (3) the circumstances of the homicide offense,

including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the "incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation." Miller, 132 S.Ct. at 2468; Aiken, 410 S.C. at 544, 765 S.E.2d at 577.

The sentencing hearing in the present case failed to meet the requirements of Miller and Aiken. The judge failed to consider the hallmark features of youth. While the defense attorney mentioned Appellant's age of fifteen (15) twice, it was nothing more than a chronological fact in a vague plea for mercy. As noted in Aiken, "[A]lthough some of the hearings touch on the issues of youth, none of them approach the sort of hearing envisioned by Miller where the factors of youth are carefully and thoughtfully considered. Many of the attorneys mention age as nothing more than a chronological fact in a vague plea for mercy. Miller holds the Constitution requires more." 410 S.C. at 543, 765 S.E.2d at 577. (n. #8 omitted). In State v. Mack, 441 S.C. 526, 544, 894 S.E.2d 820, 830 (Ct. App. 2023), the South Carolina Court of Appeals wrote, "Applying the Aiken factors involves more than repeating the words; it requires applying the substantive content of those factors." The sentencing judge failed to consider the hallmark features of a fifteen-year-old including immaturity, impetuosity, and failure to appreciate the risks and consequence. The sentencing judge failed to apply the substantive content of the Aiken factors in deciding the sentence to impose.

The sentencing judge failed to consider Appellant's home and family environment. The defense attorney told the judge about the death of Appellant's mother while Appellant awaited trial and mentioned Appellant's grandmother and aunt but did not provide the judge with any additional information about the home and family environment. The judge failed to consider

how the conduct of the older co-defendant, who received the same sentence, may have affected Appellant. The judge failed to consider the incompetencies associated with youth including Appellant's inability to assist his attorney. On the third day of trial Appellant refused to come to court from the detention center. (Tr. p. 385, line 23 – p. 386, lines 1-25). The judge failed to consider the possibility of rehabilitation. The judge failed to consider the factors required by Aiken prior to sentencing Appellant. "Miller is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution." 410 S.C. 534, 543, 765 S.E.2d 572, 576–77 (2014). The failure in the present case violates Appellant's right to be free from cruel and unusual punishment pursuant to the 8th Amendment of the U.S. Constitution and Article I Section 15 of the South Carolina State Constitution. The failure to consider the Aiken factors constitutes an error of law.

2. The family court judge erred in refusing to grant a continuance in order to meet the statutory requirement of a full investigation when mental health records were not obtained prior to the waiver hearing and not provided to the evaluator.

STANDARD OF REVIEW

" 'The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion.' " State v. Geer, 391 S.C. 179, 189, 705 S.E.2d 441, 447 (Ct. App. 2010) (quoting State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005)). " 'An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.' " Id. (quoting State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001)); see also State v. Funderburk, 367 S.C. 236, 239, 625 S.E.2d 248, 249–50 (Ct. App. 2006) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law.").

DISCUSSION

During the waiver hearing an employee of South Carolina Department of Juvenile Justice [DJJ], Miracle Griffith, testified that Appellant was seeing a therapist at Peedee Mental Health. (Waiver Hearing Tr. p. 87, lines 10-12). When Ms. Griffith requested the records from Peedee Mental Health, they had no record of Appellant receiving services. (Waiver Hearing Tr. p. 87, lines 12-14). Ms. Griffith testified that Appellant and his mother indicated that he received services at a different location. (Waiver Hearing Tr. p. 87, lines 14-15). Counsel moved for a continuance in order to obtain the records that were not obtained prior to the evaluation. (Waiver Tr. p. 93, line 21 – pp. 94 – 96, lines 1-5). Counsel argued that DJJ failed to obtain the records from the other location where Appellant received services. (Waiver Hearing Tr. p. 96, lines 3-5). The family court judge denied the motion for continuance. (Waiver Tr. p. 96, lines 6-8).

Prior to the clinical psychologist testifying counsel renewed the continuance motion and requested an additional evaluation after the psychologist reviewed the missing mental health records. (Waiver Tr. p. 183, line 13 – p. 184 – 186, lines 1-10). The judge denied the motion stating, "Thank you. I'm going to deny the motion. I think that we need to move forward, and I – I believe that she did have enough information and she certainly is an expert, knows what she's in need of. So I am going to deny the motion. Let's move forward." (Waiver Tr. p. 187, lines 14-18). The clinical psychologist who evaluated Appellant, Dr. Michelle Akers-Woody, testified that Appellant's mother indicated that he had been diagnosed with attention deficit hyperactivity disorder [ADHD] by the pediatrician when he was in the second grade, was prescribed Adderall for ADHD when he was in the fourth grade, and the dosage was increased when he was in the sixth grade. (Waiver Hearing Tr. p. 205, line 22 - p. 206, lines 1-13). The doctor also testified that Appellant's mother reported that Appellant received counseling from

CW counseling. (Waiver Hearing Tr. p. 207, lines 4-11). The doctor testified that she requested the counseling records but did not receive any mental health records. (Waiver Hearing Tr. p. 207, lines 12-14). The doctor testified that while the missing mental health records would have provided her with more information, her opinion would not change. (Waiver hearing p. 249, line 22 – p. 250, lines 1-2). Counsel renewed the continuance motion at the end of testimony. (Waiver Hearing Tr. p. 294, lines 6-9).

In the waiver order the family court judge wrote:

> During the hearing Micah Pressley's attorney moved for a continuance to gather possible mental health records regarding Micah Pressley's ADHD diagnosis and provide the evaluator with Micah Pressley's entire school record prior to the waiver hearing. This Court denied this motion. The evaluator was present for the majority of the hearing and heard additional information regarding possible mental health records and heard the detailed testimony regarding the [sic] Micah Pressley's school records and the discipline record. Additionally, the evaluator testified that she had a phone interview with Micha Pressley's mother who gave a summary of his mental health history. The evaluator stated that she did not think that any testimony she heard would change her report.
>
> After considering all of the information offered, to include the pre-waiver evaluation report, the Court is convinced that it has all the information needed form the full investigation to determine if jurisdiction of the alleged offenses should be waived to the Court of General Session.

(R. p. **, Waiver Order p. 5.). The family court judge erred in failing to grant the continuance. The summary of Appellant's mental health history provided by his mother in one telephone interview is not sufficient, especially given the extensive nature of the mental health history dating back to when he was diagnosed with ADHD in the second grade. The doctor should have received and reviewed the mental health records prior to the evaluation. Once it became clear at the waiver hearing that the doctor had not reviewed the mental health records, a continuance was necessary.

The order in the present case demonstrates that the statutory requirement of a full investigation was not met. See In Int. of Shaw, 274 S.C. 534, 542, 265 S.E.2d 522, 526 (1980). A full investigation would include obtaining mental health records. The doctor testified that she requested the records but did not receive them. (Waiver Hearing Tr. p. 207, lines 12-14). A full investigation did not take place in this case. In In Int. of Sullivan, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980), the South Carolina Supreme Court wrote:

> However, we emphasize that it is the responsibility of the family court to include in its waiver of jurisdiction order a sufficient statement of reasons for, and considerations leading to, that decision. Conclusory statements, or a mere recitation of statutory requirements, without further explanation will not suffice. The order should be sufficient to demonstrate that the statutory requirement of full investigation has been met and that the question has received full and careful consideration by the family court. The salient facts upon which the order is based are to be set forth in the order. See 43 C.J.S. Infants § 48 (1978).

S.C. Code Ann. § 63-19-1210(5) (emphasis added) provides:

> If a child fourteen, fifteen, or sixteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, **after full investigation** and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

In Kent v. United States, 383 U.S. 541, 567, 86 S. Ct. 1045, 1060, 16 L. Ed. 2d 84 (1966), the United States Supreme Court discussed factors to be considered by the family court judge in making waiver decisions and wrote, "It will be the responsibility of any officer of the Court's staff assigned to make the investigation of any complaint in which waiver of jurisdiction is being considered to develop fully all available information which may bear upon the criteria and factors set forth above." DJJ failed to fully develop all available information by failing to obtain the mental health records. The family court judge committed an error of law by refusing

to grant a continuance so that a full investigation could be completed as statutorily required. The error requires reversal of the general sessions court conviction and remand to the family court for a full investigation, new evaluation, and new waiver hearing.

3. The family court judge erred in transferring jurisdiction to the general sessions court when the record fails to support the judge's finding that the "possibility of rehabilitation does not overcome the overwhelming evidence which favors transferring the charges to general sessions."

STANDARD OF REVIEW

The appellate court will affirm a transfer order unless the family court has abused its discretion. State v. Avery, 333 S.C. 284, 292, 509 S.E.2d 476, 481 (1998). "The term 'abuse of discretion' has no opprobrious implication and may be found if the conclusions reached by the lower court are without reasonable factual support." State v. Corey D., 339 S.C. 107, 118, 529 S.E.2d 20, 26 (2000); Engle v. Engle, 343 S.C. 444, 449–50, 539 S.E.2d 712, 714 (Ct.App.2000) (stating an abuse of discretion occurs when the court is controlled by an error of law or where the order, based upon the findings of fact, is without evidentiary support). State v. Miller, 363 S.C. 635, 641, 611 S.E.2d 309, 312 (Ct. App. 2005).

DISCUSSION

Appellant was fifteen years old at the time of the offense. On the date of the waiver hearing, January 27, 2023, Appellant was sixteen years old. In the waiver order the family court judge found that probable cause existed regarding the involvement of the juvenile in the commission of the crime. (R. p. **, Waiver Order p. 4). In the order the family court judge addressed the factors outlined in Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.E.2d 84 (1966).

In State v. Jones, 392 S.C. 647, 652–53, 709 S.E.2d 696, 699 (Ct. App. 2011), the South Carolina Court of Appeals wrote:

> "Upon a motion to transfer jurisdiction, the family court must determine if it is in the best interest of both the child and the community before granting the transfer request." State v. Pittman, 373 S.C. 527, 558, 647 S.E.2d 144, 160 (2007).
>
> The family court must consider the following factors when deciding whether to waive its jurisdiction over a juvenile:
> (1) The seriousness of the alleged offense.
> (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
> (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
> (4) The prosecutive merit of the complaint.
> (5) The desirability of trial and disposition of the entire offense in one court.
> (6) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
> (7) The record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation, or prior commitments to juvenile institutions.
> (8) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available.

Id. at 558–59, 647 S.E.2d at 160 (citing Kent, 383 U.S. at 566–67, 86 S.Ct. 1045).

With regard to likelihood of reasonable rehabilitation found in Kent factor number eight, in the waiver order the family court judge wrote:

> The Court considered the testimony of Micah Pressley's current counselor and her opinion that he is doing well in his current structured environment. She testified that altercations in the facility are common place due to the close quarters that they share and she was not concerned about the one incident which took place in September 2022. While the evidence presented suggest that Micah Pressley can benefit from further treatment efforts, this Court is concerned that these treatment goals cannot be accomplished prior to his 22nd birthday. The possibility of rehabilitation of Defendant does not overcome the other overwhelming evidence

which favors transferring the charges to general sessions.

(R. p. **, Waiver Hearing Order p. 10).

The family court judge erred. First, the family court judge failed to recognize that Appellant, as a sixteen-year-old at the time of the waiver hearing, had five years to receive treatment and rehabilitate within the family court system before his twenty-second birthday. Importantly, the family court judge failed to include in the waiver hearing order the doctor's findings that the juvenile was amenable to treatment. In the evaluation the doctor wrote, "He verbally reported interest in further treatment, recognizing that it had been beneficial in the past. He acknowledged a willingness to better himself as well as learn from his mistakes." (R. p.**, Evaluation p. 14). The doctor also wrote, "Consequently, his overall Treatment Amenability scale fell at the top end of the range. This suggests that his ability to benefit from treatment efforts and motivation to charge are comparable to, if not slightly higher than, most other adjudicated youth. These findings are consistent with collateral data, including interview and historical data." (R. p. **, Evaluation p. 14). While the doctor also noted some negative factors to be considered in regard to the likelihood of reasonable rehabilitation, she noted that it is unclear if the juvenile received adequate and consistent treatment for his ADHD. [1] (R. p. **, Evaluation p.15). The likelihood of reasonable rehabilitation with adequate and consistent treatment in this case should weigh in favor of the family court retaining jurisdiction.

Second, the record fails to support a finding that there was overwhelming evidence which favors transferring the charges to general sessions court. The first three Kent factors will likely weigh in favor of transfer for any juvenile charged with murder, regardless of the individual circumstances surrounding the offense. In State v. Corey D., 339 S.C. 107, 118–19, 529 S.E.2d

[1] As discussed in issue two above, the doctor should have had the mental health records prior to completing the evaluation.

20, 26 (2000), the South Carolina Supreme Court wrote, "The family court found, and the evidence supports, that these horrible, shocking crimes were willfully committed and there was probable cause to believe respondent participated actively in all aspects of the crimes. That these crimes were violent, premeditated, and committed against elderly women clearly indicates their serious nature. While murder will always be considered 'serious,' the heinousness of these particular crimes is beyond dispute." While the murder in the present case qualifies as serious, the surrounding facts of the present case do not involve the heinous murders and sexual assaults discussed in Corey D. The serious nature of the murder offense in this case should not outweigh other Kent factors such as the sophistication and maturity of the juvenile and the likelihood of rehabilitation.

With regard to the sophistication and maturity of the juvenile, the family court judge failed to include in the waiver order findings by the doctor included in the waiver evaluation. Specifically, the doctor wrote in the waiver evaluation, "The adjudicated charge of burglary 3rd degree was minimally dangerous. Further, Micah has demonstrated an ability to feel empathy and remorse over past behaviors that may have affected another person. Given this information, Micah's level of criminal sophistication and dangerousness appears relatively lower than others within the juvenile justice system." (R. p. **, Evaluation p. 14). This factor weighs in favor of the family court retaining jurisdiction.

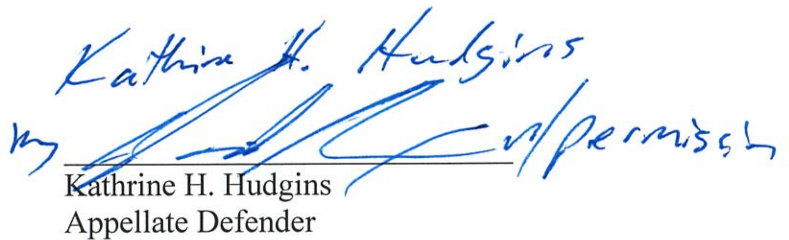
With regard to the prospects for adequate protection of the public found in factor number eight, in the waiver order the family court judge wrote, "With regard to adequate protection of the public, as stated in the evaluation, the current offenses are serious and involve the loss of life. If Micah Pressley is found guilty, the charges indicate a disregard for others and as such, there is a need for caution and concern when considering the protection of the public." As discussed

above with regard to the first three Kent factors, murder qualifies as serious. The family court judge failed to recognize that in the evaluation the doctor wrote, "Overall, Micah's risk for dangerousness fell within the Low range on the RSTI when compared to adolescent offenders. That indicates that, when compared to other adjudicated youth, he is slightly less likely in terms of dangerousness, to engage in criminal behaviors as similar juveniles. These findings are consistent with collateral data, including interview and historical data." (R. p. **. Evaluation p. 14). The low risk of dangerousness coupled with the fact that the juvenile would have five years in the family court system to receive adequate and consistent treatment with a likelihood of reasonable rehabilitation serves to protect the public. The public can be protected, weighing in favor of the family court retaining jurisdiction.

The remaining Kent factors, prosecutive merit, desire of trial/disposition of offense in one court, and the previous history of the juvenile do not outweigh the Kent factors that weigh in favor of the family court retaining jurisdiction. With regard to the previous history of the juvenile found in Kent factor number seven, the waiver order notes an extensive school disciplinary summary. (R. p. **, Waiver Hearing Order p. 10). Importantly, however, the juvenile had only one prior adjudication in family court for burglary third degree for which he successfully completed probation. (R. p. **, Evaluation p. 2). The record fails to support the family court judge's finding of overwhelming evidence to support transferring the charges to general sessions court. The family court judge abused her discretion in transferring jurisdiction to the general sessions court. The error requires reversal of the general sessions court conviction.

CONCLUSION

Based on the arguments above, this Court should reverse the conviction and remand to the family court for disposition. Alternatively, this Court should reverse the conviction and remand to the family court for a new evaluation, after obtaining all mental health records, and a new waiver hearing. Alternatively, this Court should reverse the sentence and remand for a sentencing hearing as required by Aiken v. Byars.



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ATTORNEY FOR APPELLANT

This 11th day of September, 2024.