

No. 1-09-1836

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST DIVISION
DATE 5/16/11

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 98 CR 31218
)	
ARTURO RAMIREZ,)	Honorable
)	Paul Stralka,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HALL delivered the judgment of the court.
Justices HOFFMAN and LAMPKIN concurred in the judgment.

O R D E R

HELD: Where the evidence at the transfer hearing showed that defendant's crime was premeditated and aggressive, and that defendant was associating with known gang members, the trial court did not abuse its discretion in transferring defendant to the criminal court system.

Following our remand for a second hearing, defendant Arturo Ramirez appeals from the trial court's June 9, 2009 order

granting transfer of his case from juvenile to criminal court which reaffirmed the initial transfer from 1998. On appeal, defendant contends that the court committed reversible error by upholding his original transfer despite finding that most of the statutory factors weighed in defendant's favor. We affirm.

In October 1998, defendant, who was then 15 years old, was transferred from juvenile court to the criminal court for the random shooting of an eight-year-old girl on June 23, 1998. After a bench trial in 2000, defendant was convicted of attempted first degree murder and sentenced to 12 years in prison.

On direct appeal, this court affirmed the judgment of the trial court. *People v. Ramirez*, No. 1-00-1320 (2001) (unpublished summary order under Supreme Court Rule 23). Subsequently, this court affirmed the trial court's dismissal of defendant's postconviction petition on the State's motion. *People v. Ramirez*, No. 1-03-2322 (2004) (unpublished order under Supreme Court Rule 23).

In 2006, the trial court granted the State's motion to dismiss defendant's pro se petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (2006)). On appeal from this dismissal, defendant successfully asserted that he was entitled to a new transfer hearing because his original transfer hearing in 1998 was based on a presumptive transfer provision which had been created by a

public act that was later held to violate the single subject rule (Public Act 88-680, eff. Jan. 1, 1995, commonly called the Safe Neighborhoods Law) and, thus, was void ab initio. See *People v. Cervantes*, 189 Ill. 2d 80 (1999). Accordingly, this court correctly remanded the case for a new transfer hearing to be governed by the version of the statute in effect prior to the enactment of the unconstitutional public act. *People v. Brown*, 225 Ill. 2d 188 (2007). We further found that defendant's conviction and sentence should be upheld on remand if the trial court concluded that transfer was appropriate. *People v. Ramirez*, No. 1-06-2784, slip op. at 4 (2008) (unpublished order under Supreme Court Rule 23). The instant appeal concerns the transfer hearing on remand.

On remand, a new transfer hearing was held on May 18, 2009, when defendant was 26 years old. The State presented no witnesses but entered into evidence the transcript from the original transfer hearing, which included testimony from Detective Edward Wodnicki, probation officer Jose Bravo, and defendant's father, Arturo Ramirez, Sr.

Detective Wodnicki testified that around 5 p.m. on June 23, 1998, he reported to the scene of a shooting near Hirsch Street and Central Park Avenue and spoke with Juan Unzueta and Michael Hernandez Rosales. Unzueta told Wodnicki that he had been in front of his house at 3536 West Hirsch when a green Jeep Cherokee

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stopped in the intersection of Hirsch and Central Park. The front passenger jumped out of the car, yelled "king killers," and fired five shots with a handgun, then got back into the vehicle and drove away. Unzueta described the shooter as a young male Hispanic with dark hair and a mushroom style haircut. Rosales viewed substantially the same events from in front of his home at 3542 West Hirsch. The paramedics told Wodnicki that Nancy Delgado had been in front of her house at 3511 West Hirsch when she was shot. The bullet went through her right torso and left elbow. Soon witnesses started shouting that they saw the shooter and pointed to three boys on bicycles. Wodnicki told them to stop and the boys fled. Wodnicki caught them a short distance away. Both Unzueta and Rosales identified defendant as the shooter and defendant was arrested. Later that evening, a burning green Jeep Grand Cherokee was recovered and identified as the vehicle used in the shooting. None of the other witnesses claimed to have seen the shooter.

Bravo testified that he was assigned to defendant's case. When the shooting occurred, defendant was 15 years and 4 months old and lived with his parents and siblings. He had been regularly attending school until May 1998, but due to his recent absences he was not eligible to graduate on time. Defendant had no criminal background and denied ever trying drugs or alcohol. Defendant denied being affiliated with a gang and getting in

fights at school. He also claimed he had never seen a gun. Defendant's parents never had problems with him. Bravo opined that defendant should remain in the juvenile court system based on his lack of criminal background and his stable family life. Bravo testified that defendant would benefit from counseling and would be referred to a special school in the juvenile court system. However, if defendant were transferred to and convicted in the criminal system, initially he would be incarcerated in the juvenile system and would have access to the same services.

Bravo further testified about disciplinary reports from defendant's school records. On May 28, 1998, defendant was reported to be loitering with known gang members, one of whom had a weapon. Another report, dated June 3, 1998, discussed defendant riding in a van that was believed to be owned by a suspected gang leader. Finally, a report dated June 11, 1998, stated defendant was involved in a fight with several suspected gang members.

Arturo Ramirez, Sr., defendant's father, testified that in June 1998 he went to defendant's school to ask about defendant's behavior. He spoke with a security guard and "the person interested with discipline," one of whom realized that the report in question was not about defendant. Ramirez did not see any disciplinary reports and was not aware that they had defendant's

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student ID number on them. Ramirez had never seen defendant involved in any gang activity.

At the 2009 hearing the State also entered the typewritten Juvenile Social Investigation (JSI) report prepared by Bravo in July 1998, a 1998 clinical report prepared by clinical psychologist Catherine Wilson, the disciplinary reports from defendant's school, and the police reports.

Bravo's report stated, in pertinent part, that defendant's parents were both employed at the time of the shooting and defendant worked at a restaurant each weekend. Bravo's handwritten notes indicated that defendant was following the rules in the Juvenile Temporary Detention Center.

The clinical report indicated that defendant told Wilson he was not involved in fights at school and he was at school even when he was marked absent. Wilson observed that defendant "appeared to be attempting to present himself in an unrealistically virtuous light" and viewed "the world in an oversimplified manner." Wilson found that defendant did not appear to be "unusually criminally sophisticated" and she felt that he could be rehabilitated if he remained in the juvenile court system with continued family support because of his lack of criminal history. She also found that defendant had no antisocial tendencies and that his academic deficiencies could be addressed through vocational training and counseling.

At the 2009 hearing, the defense called Investigator Langdon Mattox who testified that on May 6, 2009, he interviewed Juan Unzueta. Unzueta said that on the day of the shooting he arrived home at 5:30 p.m. He heard gunshots as he was walking toward the door of his mother's home, ducked until the shots stopped, then looked up and saw the Cherokee driving away. Mattox did not get a written statement from Unzueta.

The defense then entered certified copies of a 2007 felony conviction for heinous battery for Rosales and three convictions for Unzueta: a 2001 conviction for possession of a controlled substance (cocaine), and two 2003 felony convictions, one for armed robbery with a firearm and one for perjury.

In its ruling on June 9, 2009, the court found that the two eyewitness identifications of defendant as the shooter were sufficient for finding probable cause. The court further found that the act of shooting down a residential street was clearly premeditated and aggressive. Defendant allegedly possessed a deadly weapon and was 15 years and 4 months old at the time of the shooting, which the court said was "well below the age of 17 when there would have been exclusive jurisdiction in the criminal court." The court found that defendant's history, including his employment, his lack of criminal history, and his family support, weighed in favor of defendant. When considering whether it was in the best interest of defendant and the public to transfer

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defendant, the court specifically noted that defendant was currently 26 years old and:

"If the respondent remains in juvenile court no services can be provided.

Even though most of the factors weigh in favor of the respondent, this last factor causes me to grant the motion for transfer and to allow prosecution under the criminal laws. Perhaps this decision would have been different 11 years ago when he was age 15 with no criminal record based on the statute now known to be in effect, but he is here today age 26 and past any services possible in juvenile court."

The court found that transfer was appropriate and, pursuant to the order of this court, upheld the original conviction and sentence.

On appeal, defendant contends that the trial court committed reversible error because the court upheld his original transfer solely on the ground that, at 26 years old, defendant would no longer be able to avail himself of the juvenile court system's services.

Prior to the enactment of Public Act 88-680, the transfer provision of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 et seq. (West 1994) (repealed by Pub. Act 90-590, Art. 2001, § 2001-14 (eff. Jan. 1, 1999)) gave the trial court discretion to determine whether to transfer a juvenile to the criminal court system. 705 ILCS 405/5-4(3) (West 1994); *People v. Morgan*, 197 Ill. 2d 404, 422-23 (2001). The purpose of the transfer hearing is to balance the interests of the juvenile, especially considering his potential for rehabilitation, against society's interest in being protected from criminal victimization by minors. *People v. Fuller*, 292 Ill. App. 3d 651, 657 (1997). The duty of the reviewing court is not to reweigh the factors, but rather to determine whether the trial court abused its discretion in its evaluation of the evidence in light of the statutory factors. *Fuller*, 292 Ill. App. 3d at 658. We may affirm the trial court's judgment based on any grounds supported by the record. See *People v. Garcia-Cordova*, 392 Ill. App. 3d 468, 488 (2009).

The discretionary transfer provision enumerated seven factors for a court to consider among other matters:

"(I) whether there is sufficient evidence upon which a grand jury may be expected to return an indictment; (ii) whether there is evidence that the

alleged offense was committed in an aggressive and premeditated manner; (iii) the age of the minor; (iv) the previous history of the minor; (v) whether there are facilities particularly available to the Juvenile Court for the treatment and rehabilitation of the minor; (vi) whether the best interest of the minor and the security of the public may require that the minor continue in custody or under supervision for a period extending beyond his minority; and (vii) whether the minor possessed a deadly weapon when committing the offense."

705 ILCS 405/5-4(3)(b) (West 1994). No single factor is dispositive and equal weight need not be given to all factors. Fuller, 292 Ill. App. 3d at 657. It is not necessary for all the factors to weigh against the juvenile to allow transfer. Fuller, 292 Ill. App. 3d at 658. The trial court must also weigh the facts of the alleged crime, "particularly whether the crime was committed in an aggressive and premeditated manner." Morgan, 197 Ill. 2d at 425.

Though the trial court did take defendant's current age of 26 years into consideration when determining whether to transfer his case, we find that it does not control our disposition. Here, the trial court articulated and discussed each of the statutory factors then gave its conclusion. The court is not required to make a formal statement of reasons or conventional findings of fact. *People v. Beck*, 190 Ill. App. 3d 748, 756 (1989). Therefore, the trial court's ultimate order of transfer will be upheld as long as there is sufficient evidence in the record as to each statutory factor to support it. *Morgan*, 197 Ill. 2d at 428.

Based on the record, a few of the statutory factors weigh against defendant's transfer. Both Bravo and Wilson indicated that defendant would benefit from services available in the juvenile court system, including a special school and counseling services. Defendant was 15 years and 4 months old at the time of the shooting, and over a year from the time when the criminal court system would have exclusive jurisdiction. 705 ILCS 405/5-1, 5-3(1) (West 1994). Additionally, Bravo and Wilson both believed that defendant could be rehabilitated in the juvenile court system due to his strong family support system and lack of criminal background.

However, other factors weigh in favor of defendant's transfer. At the original hearing, Wodnicki testified to two

eyewitnesses who gave substantially similar accounts of the shooting and then identified defendant as the shooter. The evidence demonstrates that the alleged crime was premeditated and aggressive. Eyewitnesses told Wodnicki that the Cherokee drove to and stopped in the intersection of Central Park and Hirsch. Defendant jumped out of the car, yelled "king killers," fired the gun into the street, jumped back into the car and drove away. By the time the car was recovered, it had been set on fire. Defendant's words suggest that the shooting was gang related, the actions of the driver and defendant appear deliberate and would have required coordination, and shooting a gun into a street is clearly aggressive. The reports and testimony introduced at the hearing demonstrated that he was ineligible to graduate from school on time because of his absences in May 1998 and, though he denied gang affiliation, several school reports stated that defendant had been spending time and getting in fights with known or suspected gang members in May and June of 1998. Though the juvenile court system had services for defendant, even if he were convicted as an adult, he would initially be incarcerated in the juvenile system with the same services available to him. Most importantly, defendant possessed a deadly weapon during the shooting and fired shots down a street on a summer evening when people were outside, injuring an eight-year-old girl as a result. In light of the relevant factors and the evidence, the ultimate

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decision to transfer defendant from juvenile court was not an abuse of discretion.

For the foregoing reasons, we affirm the judgment of the trial court.

Affirmed.