

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
FAMILY COURT – JUVENILE DIVISION

In the Interest of:

[REDACTED]

Male, dob: 03/25/2002

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Cause No. 1822-JU00544

**ORDER DISMISSING PETITION FILED IN JUVENILE COURT TO ALLOW
PROSECUTION UNDER GENERAL LAW**

Appearances:

[REDACTED] Juvenile (hereinafter referred to as the Juvenile)

Gregory N. Smith, Attorney for the Juvenile

Sharon Davis, Deputy Juvenile Officer (hereinafter referred to as the Juvenile Officer)

Carolyn Whitehorn, Attorney for the Juvenile Officer

[REDACTED] Mother of the Juvenile

[REDACTED] Father of the Juvenile – (Not Present)

Sarah Evola, Victims Services Representative

Marilyn Harper, Wife of Deceased Ralph Harper

On June 6, 2019, this Court heard evidence on the Juvenile Officer’s Motion to Dismiss to Allow Prosecution of the Juvenile Under General Law.

The Court, after careful review and due consideration, now makes the following findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On October 30, 2018, the Juvenile Officer filed a petition, and subsequent First Amended Petition which alleged, in part that:
 - (a) The Juvenile, in violation of Sections 570.023 and 562.012, RSMo, committed the offense of ATTEMPT ROBBERY FIRST DEGREE, a Class B felony, in that on or about October 29, 2018, in the City of St. Louis, State of Missouri, the Juvenile attempted to forcible take an automobile, which was owned by and in the lawful possession of Ralph Harper by pointed a deadly weapon at Ralph Harper and demanded his property and such conduct was a substantial step toward the commission of the offense of ROBBERY FIRST DEGREE and was done for the purpose of committing such offense.
 - (b) The Juvenile, in violation of Section 565.021, RSMo., committed the offense of MURDER SECOND DEGREE, a Class A felony, in that on or about October 29, 2018, in the City of St. Louis, State of Missouri, the juvenile attempted to committed the felony of ROBBERY IN THE FIRST DEGREE, and in the perpetration of such felony, Ralph Harper was killed as a result of the attempted perpetration of such felony by being shot by the juvenile.
2. The offenses alleged, if committed by an adult, constitute felonies, but on the date the offenses allegedly were committed, the Juvenile, whose date of birth is March 25, 2002, had attained the age of 16 years and 7 months.
3. The Juvenile Officer filed a Motion to Dismiss which alleged, in pertinent part, that the alleged acts of the Juvenile constituted offenses for which the Juvenile may be transferred to a court of general

jurisdiction and prosecuted under the general law and, additionally, that the juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code.

4. This Court has exclusive original jurisdiction in this cause. Section 211.031, RSMo. and Section 211.071, RSMo.

5. Under section 211.071.1, RSMo., if a petition alleges that a juvenile between the ages of twelve and seventeen has committed an offense which would be considered a felony if committed by an adult, the court may order a hearing and dismiss the petition, in which event the child may be transferred to a court of general jurisdiction and prosecuted under general law. However, if a petition alleges that any child has committed a particular offense, such as Murder Second Degree, under Section 565.021 and 562.041, as in this case, the court shall order a hearing.

6. Under section 211.071.6, RSMo., the criteria which a court shall consider in determining whether a juvenile is a proper subject to be dealt with under the juvenile law and whether there are reasonable prospects for rehabilitation within the juvenile justice system are:

(a) The seriousness of the offense alleged and whether protection of the community requires transfer to a court of general jurisdiction;

(b) Whether the offense alleged involved viciousness, force and violence;

(c) Whether the offense alleged was against a person or property, with greater weight given to an offense against a person, especially if personal injury resulted;

(d) Whether the offense alleged are part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the juvenile code;

(e) The record and history of the child, including his experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions, and placements;

- (f) The sophistication and maturity of the child, as determined by consideration of his home and environment situation, emotional condition and pattern of living;
- (g) The age of the child;
- (h) The programs and facilities available to the juvenile court in considering disposition;
- (i) Whether or not the child can benefit from the treatment or rehabilitative programs available to the juvenile court;
- (j) Racial disparity.

7. The Court is charged with considering the factors contained in 211.071.6, RSMo. to determine “whether the child is a proper subject to be dealt with under the provisions of this chapter and whether there are reasonable prospects of rehabilitation within the juvenile justice system.” 211.071.6 RSMo. The list of factors is not exclusive. Per the statute, the criteria the Court has to consider in making its decision shall include “but not limited to” the ten factors in 211.071.6, RSMo. Though there are ten factors which this Court must consider, “it is not necessary, of course, nor desirable, for the Court to give equal weight to each of the eight factors listed by the statute. It (is) not necessary for (the court) to make an express finding on each one.” State v. Garbe, 740 S.W.2d 266, 268 (MO. App. 1987) (The Garbe case references section 211.071 RSMo, Supp. 1987 and eight factors at that time as to opposed to ten factors currently).

8. The Court makes the following findings pursuant to Section 211.071.6 RSMo.:

- (a) **The seriousness of the offense alleged and whether protection of the community requires transfer to a court of general jurisdiction.**

The conduct alleged to be committed by the Juvenile is Murder Second Degree, a class A felony, and Attempt Robbery First Degree, a class B felony. The offenses Murder Second Degree and Attempt Robbery First Degree are serious offenses of a type that

involve a need to protect the community; to wit: the victim was shot during an attempted robbery and died as a result of being shot. The range of punishment in a court of general jurisdiction for the offenses alleged is incarceration in the Missouri Division of Adult Institution for period from ten to thirty years, or life in prisonment for Murder Second Degree and from five to fifteen years for Attempt Robbery First Degree.

(b) **Whether the offense alleged involved viciousness, force and violence.**

The conduct alleged involved viciousness, force and violence to the victim Ralph Harper who was shot during the attempted robbery of his vehicle and died as a result of being shot.

(c) **Whether the offense alleged was against a person or property, with greater weight given to an offense against a person, especially if personal injury resulted.**

The conduct alleged is a Murder Second Degree and Attempt Robbery First Degree of Ralph Harper who was shot during the course of the attempt robbery of his vehicle which resulted in his death.

(d) **Whether the offense alleged is part of a repetitive pattern of offenses which indicates that the juvenile may be beyond rehabilitation under the juvenile code.**

There was no evidence presented that indicated that the offense alleged is a part of a repetitive pattern of offenses. The evidence presented indicates that the alleged offense is an isolated incident.

(e) **The record and history of the juvenile, including his or her experience with the juvenile system, other courts, supervision, commitments to juvenile institutions, and placements.**

This is the first referral of juvenile to the family court. There is no evidence that juvenile has any other contacts with the legal system, including no contact with the juvenile justice system, other courts, supervision by any court, commitment to any juvenile institution or any other placement. While the juvenile has never been provided with formal services through this court, the juvenile did have an informal referral to this Juvenile Court for neglect of education in its Truancy Court on 4/21/08 and successfully completed that on 7/30/08.

(f) The sophistication and maturity of the juvenile, as determined by consideration of his home and environment situation, emotional condition and pattern of living.

While juvenile lives at home with his mother, the juvenile was not attending his school, Confluence Prep Academy since September of 2018. His attendance at Confluence Prep Academy during the 2017-2018 and 2018-2019 school year had been sporadic, his grades were very poor both years of his 9th and 10th grade, failing all but one class in each of the two years. Further, the juvenile was not employed and has a history of drug abuse, in particular the use of marijuana. The juvenile has tested positive for marijuana and has admitted using marijuana. The nature of this offenses with the use of a handgun and robbery and death of the victim during the course thereof exhibits a maturity and sophistication by the juvenile beyond his tender years.

(g) The age of the child.

Juvenile is now nearly seventeen years and two months of age. The offense charged is alleged to have occurred on October 29, 2018. Juvenile was sixteen years and seven months of age at the time of the alleged conduct described in the offenses charged in the petition. The age of the juvenile neither precludes nor requires certification.

(h) The programs and facilities available to the juvenile court in considering disposition.

The juvenile is in need of long-term care and structure. No private facility with a long-term structured program is available. Although the Division of Youth Services has facilities that provide long-term structured environment, the Division of Youth Services can only retain jurisdiction over a youth until the age of eighteen. This Court cannot order the Division of Youth Services to place the juvenile in a residential facility and at nearly seventeen and a half years of age, insufficient time exists to rehabilitate the juvenile within the juvenile justice system. No adequate facility exist for the security level and time necessary for adequate treatment to rehabilitate the juvenile within the juvenile justice system.

(i) Whether or not the juvenile can benefit from the treatment or rehabilitative programs available to the juvenile court.

The Division of Youth Services may, but is not required to, retain the jurisdiction over the Juvenile after the juvenile attains the age of eighteen years. The Division of Youth Services prior to the eighteenth birthday may petition a court of jurisdiction to maintain custody until the age of twenty-one but is not required to do so. The Division of Youth Services determines the juvenile's placement; therefore, upon commitment to the Division of Youth Services, the Juvenile may be placed in the community. The juvenile has less than a year until his eighteen birthday on March 25, 2020. Thus there is insufficient time for the juvenile to benefit from treatment or rehabilitative programs available to the juvenile court.

(j) Neither race nor gender of the juvenile, or the alleged victim, has been considered by this Court in making this order. Race and gender are not appropriate factors to be used in making a decision on whether to transfer jurisdiction from the juvenile court to a court of general jurisdiction.

The Court finds that the race or gender of juvenile, or the alleged victim in this matter, were not factors in the Juvenile Officer's determination of which charges to allege against the juvenile, or whether to seek certification.

9. Because the juvenile is seventeen years and two months old, there can be no reasonable prospect of rehabilitation within the juvenile justice system. This Court therefore can no longer retain jurisdiction and must certify juvenile as an adult to be tried by a court of general jurisdiction. This court finds the juvenile to possess a maturity and responsibility in participating in vicious and violent conduct consisting of attempt robbery and subsequent murder. These actions and conduct exhibit a maturity of street wisdom beyond his tender years.

10. Based upon evidence adduced, including but not limited to petitioner's exhibit #1, the juvenile officer's social investigation for certification hearing, which this court finds to be clear, cogent and convincing evidence, that the juvenile is not a proper subject to be dealt with under the juvenile law. The Court further finds that there are no reasonable prospects for rehabilitation within the juvenile justice system. The Juvenile Officer's Motion to Dismiss to Allow Prosecution of the Juvenile under the General Law is hereby granted by this Court.

ORDERS

IT IS HEREBY ORDERED THAT the petition filed by the Juvenile Officer against [REDACTED] on October 30, 2018, along with the First Amended Petition is hereby Dismissed Without Prejudice.

IT IS FURTHER ORDERED THAT jurisdiction over juvenile [REDACTED] is hereby transferred to the Court of General Jurisdiction for the purpose of prosecution of [REDACTED] as an adult.

IT IS FURTHER ORDERED THAT [REDACTED] is released and discharged from the jurisdiction of the Family Court.

IT IS THEREFORE ORDERED THAT the Juvenile Officer's Motion to Dismiss shall, be and hereby is, granted.

IT IS FURTHER ORDERED THAT the Juvenile Officer shall forthwith forward a copy of the Petition and a copy of this order to the Circuit Attorney for the City of St. Louis.

IT IS FURTHER ORDERED THAT a copy of this order shall be filed by the Circuit Attorney for the City of St. Louis with the court of general jurisdiction simultaneously with the filing of the Information, Complaint or Indictment against the juvenile [REDACTED] for criminal conduct which is the proper subject matter of this cause. The certification judgment shall be filed in accordance with the proper security level.


IT IS FURTHER ORDERED THAT the appropriate law enforcement agency shall forthwith fingerprint and photograph the juvenile [REDACTED] in accordance with its booking procedures.

IT IS FURTHER ORDERED THAT the jurisdiction of this Court is hereby terminated.

Date:

June 13, 2019

SO ORDERED:



THE HONORABLE STEVEN R. OHMER
22nd CIRCUIT OF MISSOURI

Certificate of Services

p.c.

Carolyn Whitehorn - Attorney for Juvenile's Officer

Sharon Davis – Deputy Juvenile Officer

Gregory N. Smith – Attorney for Juvenile

Circuit Attorney