

COPY

IN THE JUVENILE COURT FOR HAMILTON COUNTY, TENNESSEE

In the matter of: :

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██████████, b. 07/07/1994 : No. 230.746

A Child Under the Age of Eighteen Years. : 230.747

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ORDER

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This matter came to be heard by the Honorable Suzanne Bailey, Judge of the Juvenile Court for Hamilton County, Tennessee, upon the State's filing a Notice of Intent to Transfer the defendant child to be tried as an adult pursuant to T.C.A. § 37-1-134 on the charges of aggravated rape of a child (Petition 230.746) and felony murder by aggravated rape of a child (Petition 230.747). Present before the Court were the defendant child, ██████████, with his attorney, Justin G. Woodward, his Guardian ad litem, Attorney Elizabeth Gentzler, and his mother, Constance LaVoie, Detective Michael Cox, Hamilton County Sherriff's Department, and H. C. Bright, Assistant District Attorney General.

The Court took proof and heard testimony on June 18, 2009, at which time the Court heard testimony from Constance LaVoie, ██████████ mother, and from Dr. James Kenneth Metcalfe, M.D., Forensic Pathologist from Hamilton County Medical Examiner's Office. Due to the late hour, the matter was continued for proof to be offered on June 24, 2008, at which time the Court heard testimony from Detective Michael Cox and viewed the video recording of ██████████ statement. Due to technical difficulties with the State's DVD evidence and to allow enough time for a Forensic Psychological examination, the matter was continued to July 17, 2009. At that hearing, the Court heard testimony from Terry Nation, Case Manager with Family Menders, Elleni Dimopoulos, Acting Regional Administrator for the Tennessee Department of Children's Services, and Constance LaVoie. The Forensic Evaluation Report was admitted by stipulation of the parties. At the conclusion of closing arguments, the Court took the matter under advisement in order to review the complex proof presented.

Based upon the proof and testimony offered, the Court finds that:

1. The State presented marginally sufficient evidence for the Court to find reasonable grounds to believe that, on or about April 20, 2009, ██████████ may have committed the offenses as charged in that the defendant child had opportunity during the time he was left alone to care for the victim and other small children in the home. Further, he admitted in his statement that he hit the victim child but denied having inflicted the fatal injuries. Testimony related to the defendant child's psychological evaluation, however, indicated that multiple other persons were in the household, including the mother's husband, who she testified is disabled, his part-time home health care provider, the mother's seventeen and nineteen year old daughters, an eight year old son, as well as the mother herself during the one to two day period in which the Medical

Examiner believes the injuries were sustained. While Ms. LaVoie testified that the victim child was not alone with any other person who could have inflicted the fatal injuries during the specified time period, she also testified that even when she is present in the home she is not always aware of who comes and goes from the house.

The home environment in which the tragic death of this Child occurred raised many questions for the Court. The defendant child lived in a mobile home with his mother, her husband, two older half sisters, an eight year old half brother, and four children under the age of three years including the deceased child, her brother, and two children of the half sisters.

Ms. LaVoie testified that her son, the defendant child, did not sleep in a bed but instead slept on the sofa with the two year old brother of the victim child. The defendant reported to the Forensic Examiner that he slept on the sofa because he was tired of boys and men knocking on his window at night to come into the trailer to be with his half sisters.

From the proof and testimony offered, it appears that many people come and go from the home at all hours of the day and night. The defendant child was frequently left alone to care for four (4) children under the age of three (3) years. He was responsible for bathing, feeding, and disciplining the small children with little supervision, support, or training. Further, it appears that he was responsible for any care required by Ms. LaVoie's husband during these times as there was no one else home; and that,

2. Having found that reasonable grounds exist to believe that the Defendant may have committed the acts as charged, the Court must determine whether the interests of the community require that the subject Child be transferred to be tried as an adult. In consideration of T.C.A. § 37-1-134(b), which sets forth the factors which must be considered in this determination, the Court finds that:

a. The defendant child was fourteen (14) years of age at the time of the alleged offense and has no prior adjudication of delinquency. Should the State of Tennessee be able to prove beyond a reasonable doubt that he is guilty and in need of treatment and rehabilitation, it appears from the testimony of Elleni Dimopoulos, Regional Administrator, that resources are available through the Juvenile Justice Division of the State of Tennessee, Department of Children's Services in a secure placement to provide appropriate treatment and rehabilitation; and that,

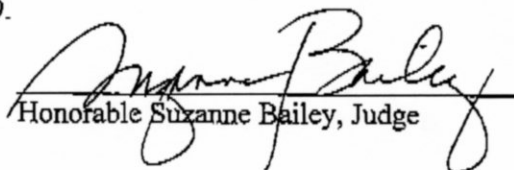
b. Following a Court Ordered evaluation and the findings of that examination, [REDACTED] is not committable to an institution for the mentally ill or mentally retarded. However, the Forensic Evaluation revealed that the defendant child is a year behind in school. He is diagnosed with attention deficit hyperactivity disorder for which he takes medication. Evaluators report that cognitive and neuropsychological test results indicated mild to moderate cognitive deficits implicating the neuroanatomic and functional areas of frontal-executive and left-hemispheric verbal abilities. These areas were represented as being below average compared to his chronological age peers and his global cognitive abilities. This cognitive deficit could diminish his ability to control his behavior and/or to understand the consequences of his actions. It should be possible to assist the defendant to develop age-appropriate executive functioning skills, and to teach him necessary coping skills to avoid dangerous behavior. If necessary, such training and/or therapy would be appropriately undertaken in the juvenile justice system.

For these reasons, the Court finds that [REDACTED] should not be transferred to be tried as an adult in the Criminal Court. It appears that, if he should be proven guilty and adjudicated a delinquent in need of treatment and rehabilitation, he can be treated and rehabilitated by removing him from the chaotic environment of his home and placing him in the secure custody of the Tennessee Department of Children's Services Juvenile Justice Division. If the State is unable to prove his guilt beyond a reasonable doubt at a hearing on the merits, then his needs can be addressed through the pending actions concerning his parental care.

IT IS THEREFORE ORDERED THAT:

1. An attorneys only conference will be held on Tuesday, July 28, 2009 at noon to select a hearing date; and that,
2. The Minor Child, [REDACTED], shall remain in the Juvenile Detention Center pending further Order of this Court.

Enter, this the 24<sup>th</sup> day of July, 2009.

  
Honorable Suzanne Bailey, Judge