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IN THE
COURT OF APPEALS OF INDIANA

BILLY RAINES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 13A01-1008-CR-415
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

INTERLOCUTORY APPEAL FROM THE CRAWFORD CIRCUIT COURT
The Honorable K. Lynn Lopp, Judge
Cause Nos. 13C01-1005-FB-004 & 13C01-1005-JD-010

July 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

This is an interlocutory appeal from (a) an order waiving jurisdiction from juvenile court to adult criminal court and (b) a subsequent order in adult criminal court denying dismissal and remand. Billy Raines was charged as a juvenile with what would be Class B felony arson if committed by an adult. The State moved for waiver of jurisdiction to adult criminal court. The juvenile court convened a hearing, received testimony from several witnesses on the propriety of waiver, and issued an order waiving jurisdiction. Raines then moved the adult criminal court for dismissal and remand, tendering previously-unoffered evidence that he suffered psychiatric illness. The court denied Raines' motion to dismiss, and Raines now appeals. Raines claims that the juvenile court erred by waiving jurisdiction without hearing evidence on his psychiatric illness. We find no error by the juvenile court in waiving jurisdiction. Raines bore the burden of producing the psychiatric evidence at his waiver hearing and failed to do so. In addition, he neither moved for a continuance nor otherwise indicated to the juvenile court that he needed more time to prepare for the hearing. We affirm.

Facts and Procedural History

Raines and an accomplice allegedly set fire to several vans at a church parking lot in Crawford County. Raines was seventeen years old at the time of the alleged offense.

The State filed a delinquency petition on May 13, 2010, charging Raines with what would be Class B felony arson if committed by an adult. The State filed an accompanying motion for waiver of jurisdiction to adult criminal court. The juvenile court scheduled a waiver hearing for May 18.

On May 14, counsel entered an appearance on behalf of Raines, and on May 18, the juvenile court convened the waiver hearing. Raines did not move for a continuance beforehand.

The State called four witnesses: investigating officers Richard Magill and Marcus Rogers, Crawford County Chief Probation Officer Jim Grizzel, and Southwest Regional Youth Village transport manager Dan Robinson. Officers Magill and Rogers testified to their investigation of the alleged arson and Raines' alleged involvement. Grizzel testified to Raines' age, his prior unrelated charges of battery and criminal mischief, and his experience with hospitalization and informal adjustment. Grizzel opined that "there's nothing the juvenile system can offer him." Tr. 5/18/10 p. 26. Robinson relayed information that Raines was involved in a fight while housed at Southwest and that he misbehaved during a previous trip to court.

Raines cross-examined the State's witnesses but introduced no evidence of his own. The court asked whether the defense had any witnesses. Counsel replied no. The juvenile court asked whether the parties wished to make closing arguments and/or submit briefs. Both parties presented closing arguments.

After the hearing, the juvenile court entered an order waiving jurisdiction to adult criminal court. The order set forth in pertinent part:

> The court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction under the provisions of IC 31-30-3-5[], and the Court being duly advised in the premises, the Court now makes the following findings of fact:
>
> (1) That said child was sixteen (16) years of age or older, and under eighteen (18) years of age, at the time of the charged offense.

> (2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of Petition Alleging Delinquency filed on 5-13-10.
>
> (3) That the offense charged is (Arson IC 35-43-1-1), a Class B Felony[.]
>
> (4) That there is probable cause to believe that said child committed said offense.
>
> (5) The Court has not found from the evidence that it would be in the best interest of the child and the safety and welfare of the community for him to remain within the Juvenile justice system.
>
> > A) Court finds due to the juvenile[']s age (less than 3 months till 18th birthday)
> > B) Repetitive pattern of delinquent acts (even [though] less severe in nature)
> > C) Lack of response by juvenile and his prior informal treatment as provide[d] by juvenile justice system.
>
> It is therefore adjudged and ordered that juvenile jurisdiction over this case be and the same hereby is, waived to the Circuit Court of Crawford County, a Court that would have jurisdiction over the act charged if the act were committed by an adult, said waiver being granted for the offense charged and any lesser offense included therein.

Appellant's App. p. 92-93. Raines' case was waived to circuit court, though it remained before the same trial judge.

Three weeks later, Raines moved to dismiss and remand, alleging that he suffered psychiatric illness which was not considered by the juvenile court before it waived jurisdiction. Defense counsel claimed that he was unaware of Raines' psychiatric illness at the time of the waiver hearing. The trial court convened a hearing on the motion to dismiss, at which Raines' mother testified that Raines suffers severe psychiatric illness. Raines evidently has been diagnosed with, among other things, post-traumatic stress

disorder, bipolar disorder, and mild mental retardation. He has taken numerous medications and been hospitalized on several occasions since the age of ten.

The trial court denied Raines' motion to dismiss. The court noted that there was no showing that the psychiatric evidence tendered at the dismissal hearing was not available at the waiver hearing. Raines sought leave to pursue this interlocutory appeal. The trial court granted certification, and we accepted jurisdiction.

Discussion and Decision

Raines claims that (a) the juvenile court erred by waiving jurisdiction to adult court without considering evidence of his psychiatric illness and (b) the circuit court subsequently erred by failing to dismiss and remand.

Generally speaking, the juvenile court has exclusive original jurisdiction over proceedings in which a child is alleged to be delinquent. Ind. Code § 31-30-1-1(1); *Truax v. State*, 856 N.E.2d 116, 122 (Ind. Ct. App. 2006).

However, the juvenile court "shall, upon motion of the prosecuting attorney and after full investigation and hearing," waive jurisdiction if it finds that (1) the child is charged with a non-drug-related Class A or Class B felony; (2) there is probable cause to believe that the child committed the offense; and (3) the child was at least sixteen years old when the offense was allegedly committed; "unless it would be in the best interests of the child and of the safety and welfare of the community for the child to remain within the juvenile justice system." Ind. Code § 31-30-3-5.

The State bears the burden of establishing by a preponderance of the evidence that juvenile jurisdiction should be waived. *Hall v. State*, 870 N.E.2d 449, 455 (Ind. Ct. App.

2007), *trans. denied*. Once the State has made the first three required showings under Section 31-30-3-5, a presumption in favor of waiver arises, and the burden shifts to the juvenile to produce evidence that it would be in his best interests and the best interests of the safety and welfare of the community for him to remain within the juvenile justice system. *Roberson v. State*, 900 N.E.2d 446, 448 (Ind. Ct. App. 2009), *clarified on reh'g*, 903 N.E.2d 1009 (Ind. Ct. App. 2009), *trans. denied*. It is then within the discretion of the juvenile court to retain the child in the juvenile system or to waive juvenile court jurisdiction. *Hagan v. State*, 682 N.E.2d 1292, 1295 (Ind. Ct. App. 1996).

The juvenile court's investigation and hearing is not to be a perfunctory proceeding but is one intended to protect the full panoply of rights provided by our state and federal constitutions. *Vance v. State*, 640 N.E.2d 51, 55 (Ind. 1994). The record must demonstrate unequivocally that the statutory requirement of a full investigation and hearing has been met and that a conscientious determination of the question of waiver has been made. *Summers v. State*, 248 Ind. 551, 230 N.E.2d 320, 325 (1967).

Here we conclude that the juvenile court did not err by waiving jurisdiction to adult criminal court. At the waiver hearing, the State made preliminary showings that (1) Raines was charged with a non-drug-related Class B felony, (2) there was probable cause to believe he committed the offense, and (3) Raines was at least sixteen years old at the time the offense was allegedly committed. The State thus satisfied its initial burden of production under Section 31-30-3-5, a presumption of waiver arose, and the burden shifted to Raines to present evidence that it was in his and the community's best interests for him to remain within the juvenile system. Raines offered no such evidence—and in

particular, he introduced none of the psychiatric evidence later proffered to the circuit court on the motion to dismiss. To the contrary, the State elicited testimony that there was nothing that the juvenile system could offer him. The juvenile court was therefore warranted in not finding that it would be in Raines' and the community's best interests for Raines to remain in the juvenile system. Finally, the record reflects that the juvenile court made a conscientious determination of waiver and in no way treated Raines' proceeding as a perfunctory formality. The court received testimony from four State's witnesses, permitted cross-examination by the defense, solicited briefs, heard closing arguments from both parties, and issued a detailed order explaining the basis of its ruling.

We acknowledge that the waiver hearing took place only four days after defense counsel entered an appearance on Raines' behalf. That left counsel with fairly little time to get ready. But counsel could have moved for a continuance if he needed more time to consult with his client and collect evidence. A continuance likely would have been compulsory had it been requested. *See Vance*, 640 N.E.2d at 55 ("[U]nder the circumstances here, where a mere two days elapsed between the time counsel was appointed for Vance on Saturday and the waiver hearing on Monday, and where Vance requested a continuance, one was required in order that the statutory full investigation could take place and Vance could marshall evidence as to why he should remain in the juvenile justice system."). Yet counsel neither requested a continuance nor otherwise indicated to the juvenile court that he needed additional time to prepare. Moreover, as the circuit court noted, there is no indication that Raines' psychiatric evidence was not available at the time of the waiver hearing.

We further acknowledge that Section 31-30-3-5 requires not only a hearing but a "full investigation" before the juvenile court may waive jurisdiction. However, contrary to Raines' suggestions on appeal, we do not construe Section 31-30-3-5's "full investigation" clause to require some sort of independent and protracted investigation by the juvenile court itself. The onus remains on the parties to do their homework and bring their evidence to court—and, for that matter, to alert the court if they need more time. The "full investigation" is completed by way of the parties gathering evidence in support of their positions and tendering that evidence at the hearing, and then by the juvenile court evaluating the evidence, hearing arguments by the parties, and determining whether waiver is appropriate.

For the reasons stated, we find no error in the juvenile court's waiver of jurisdiction. The juvenile court's order waiving jurisdiction and the circuit court's order denying Raines' motion to dismiss are both affirmed. This cause is remanded to circuit court for further proceedings.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.