

FILED

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VIGO CIRCUIT & SUPERIOR COURTS
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STATE OF INDIANA
VIGO CIRCUIT COURT
JUVENILE DIVISION
2022 TERM

IN THE MATTER OF
MONTEZ ELLINGTON,
A Child Alleged to Be a Delinquent Child
DOB: 11-28-2005

CAUSE NO. 84C01-2108-JD-830

ORDER

This matter comes on for a hearing on the State's Motion for Waiver of Juvenile Court Jurisdiction on May 25 and 26, 2022. The minor appears in person and with his parents and counsel, Kay A. Beehler and Steven D. Cuvelier. The State appears by Chief Deputy Prosecutor Rob Roberts. Witnesses are sworn and evidence is heard and the court, having taken the matter under advisement, and having granted counsel for the Minor's oral request to submit proposed findings of fact, conclusions of law and judgment in accordance with TR 52, now finds and orders as follows.

On August 2, 2021, the State of Indiana filed a Petition Alleging Delinquency, charging the Minor in Count 1 with the murder of fifteen-year-old C. C., which would be a Level X felony if committed by an adult; in Count 2 with the attempted murder of another juvenile whose initials are S.R., which would be a Level 1 felony if committed by an adult; and in Count 3 with Criminal Recklessness for shooting a firearm into a vehicle with individuals inside, which would be a Level 5 felony if committed by an adult. The petition alleged that the offenses occurred on July 23, 2022.

On August 3, 2021, the State of Indiana filed a Motion for Waiver of Juvenile Court Jurisdiction under I.C. 31-30-3-4. On December 29, 2022, the State of Indiana filed an Amended Motion for Waiver of Juvenile Court Jurisdiction, under both I.C. 31-30-3-4 and I.C. 31-30-3-2.

FINDINGS OF FACT

1. Montez Ellington was born on November 28, 2005, making him fifteen years and two hundred thirty-seven days (15.65 years) old on July 23, 2021 - the date that the acts alleged in the Petition Alleging Delinquency were alleged to have occurred.
2. The offenses charged in the Petition Alleging Delinquency allegedly occurred in Vigo County, Indiana.
3. The biological parents of Montez Ellington are Montez Ellington, Sr., and Danielle Baugh.
4. On or about July 23, 2022 after midnight, multiple juveniles were inside or near a maroon GMC Acadia parked on the west side of the gas station and convenience store located on the southeast corner of 13th Street and Poplar Street in Terre Haute, Vigo County, Indiana. The vehicle was parked facing west, toward 13th Street. Victim C.C. was seated in the middle row, driver's side seat. Juvenile I.B. was standing just outside of the front passenger door. The front (or north side) and west side of the structure are depicted in State's Exhibits #6 and #8.
5. Detective Brad Rumsey of the Terre Haute Police Department received a call from Chief Matt Carden, advising that there had been a shooting with a homicide and that he was to respond to the intersection of 19th and Poplar in Terre Haute, where a GMC Acadia was parked with a driver's side rear window broken out. An undetermined number of juveniles had reportedly fled from the vehicle and C.C.'s body had been removed from the middle seat of said vehicle prior to Detective Rumsey's arrival. A substance that appeared to be blood was on the driver's side middle seat and floor board area.
6. The autopsy of C.C. was performed by Dr. Dele Adeagbo, who determined the cause of death was a single gunshot wound through the head. The manner of death was ruled a homicide. No other significant injuries were observed to the juvenile victim. No other contributing factors to the cause of death were found.
7. Sometime after the GMC Acadia was parked in the convenience store parking lot at 13th and Poplar, surveillance video showed four individuals approach the store on foot, walking from the east along Poplar Street. Once the four entered the northeast corner of the property, C.S., K.S., and C.S. continued across the gas station lot and entered the store. C. S. was seen wearing a backpack inside the store.

8. K.S. reported when he arrived at the gas station he observed I.B. dancing outside the passenger side of a red SUV. The fourth individual seen in the surveillance video walked between the store and the building to the east toward the rear of the store. This person was wearing black shorts, a black shirt, and black shoes and has bushy black hair. State's Exhibit #20, a still shot taken from the video, shows the individual heading between the two buildings alone. C.S. later identified this person as the respondent, Montez Ellington, Jr.
9. K.S. identified the person in the black clothing on the gas station surveillance video as Montez Ellington. K.S. also reported observing Montez Ellington with a gun in the days prior to the shooting.
10. Ellington proceeded around the rear of the building under the cover of darkness where he then fired five (5) shots in the direction of I.B. and the maroon Acadia SUV. Two shots struck the upper half of the Acadia, while two others struck a kerosene pump and another area of the gas station. One of the shots that struck the car entered through the driver's side rear door window, striking C.C. in the head, passing through the front passenger seat headrest, and finally striking the front passenger seatbelt adjustment mechanism. The bullet was later recovered from this area. The second shot striking the car hit the top of the vehicle and the luggage rack rail.
11. There are no surveillance video cameras covering the areas to the west of the store near 13th Street where the SUV was parked, the rear of the store near the alley where the shooter fired from, or between the store and the building to the east of the store.
12. Broken glass from the Acadia was found on the southwest part of the premises. Five shell casings were found on the ground behind the southwest corner of the building.
13. C.S. (male) , K.S.(male), and C.S. (female) and the store clerk are shown inside of the store on surveillance video. The people inside the store are observed on the video apparently reacting to an event outside of the store. C.S. (male) told police that he heard gunshots fired while he and the other juveniles were inside the store. The reaction happens shortly after the three juveniles entered the store and is consistent with the timing and location of the shots that were fired to the west of the store.

14. After the shots were fired, I.B. returned to the car. The driver then drove the SUV away from the gas station, ultimately travelling east on Poplar Street and stopping east of 19th Street on Poplar Street. The various occupants fled the vehicle, some hiding in the area, and 911 was called. Emergency medical personnel and law enforcement responded to the location, which is when C.C. was found inside the SUV with a gunshot wound to the head.
15. When combining the location of the shell casings near the southwest corner of the store, the position of the parked Acadia, and the locations of the bullet damage to the Acadia, the evidence demonstrates that the trajectory of the bullets fired from the rear of the building were directed toward the top of and over the Acadia, at an angle directed toward the front passenger door, consistent with the location of a standing or dancing I.B.
16. After firing the shots, the shooter fled the scene. Later that morning, C.S. (male) was located by law enforcement. At the time, he was wearing a backpack that contained a handgun. This handgun was later examined by the Indiana State Police Laboratory Firearms and Toolmarks Division and determined to have been the same gun that fired the shell casings located behind the store. C.S. (male) later reported that he had picked up the gun from a third person after the shooting.
17. The ownership of the handgun came back as registered to a resident of the Lincolnshire-Woodshire neighborhood on the east side of Terre Haute. C.S. (male) said he was with K.S. (male) one night in that neighborhood with his sister, C.S. (female), when K.S. (male) said he found the gun in a car. Four other vehicles were reported to have been broken into in that neighborhood on the night of July 20, 2021.
18. K.S. (male) gave a sworn statement to police in which he said that he had seen Montez Ellington with a handgun in the recent past prior to the night of the shooting.
19. A female juvenile named M.H. gave a sworn statement to police, advising that she was with her friend H.O. shortly after the time of the shooting, when they received a Facetime phone call from Montez Ellington, who reported that he "had three bodies on him." The girls were separated and interviewed and gave similar statements about receiving this phone call

from Montez Ellington. Both girls said that he was running while speaking to them and that he told them he was on 8th Avenue near Union Hospital.

20. A Snapchat account belonging to K.S. (male) showed K.S. to be firing a handgun which appeared to be the same gun located in C.S.'s (male) backpack, being fired in an alley behind K.S.'s (male) home. The metadata indicated the video recording was created on July 20, 2021. As part of the investigation into the murder of C.C., the alley was searched and shell casings were found.
21. The Indiana State Police determined that the shell casings recovered from the alley behind the home of K.S. (male), the shell casings found behind the convenience store at 13th and Poplar, and the bullet from the door post from the GMC Acadia at 19th and Poplar from which C.C.'s body was retrieved, were all shot from the same weapon.
22. C.S. (male) said that he was at the home of K.S. (male) when a female called and said she needed a gun and that they took the girl the same gun that was later located in his backpack after the shooting. Police acknowledged that C.S. (male) appeared to be "high" on some sort of intoxicating substance when interviewed following the shooting.
23. K.S. (male) told police that Montez Ellington told him that he had disposed of the gun after the shooting.
24. In the early morning hours of July 23, 2021, after the shooting, police were searching the area of the Marylaine Apartments, north of Union Hospital. Police saw a vehicle circling in the area and an individual matching the description of the shooting suspect from the convenience store was seen briefly running from the vehicle. The car was followed and stopped at 10th and Buckeye St. As soon as police opened the rear door of the vehicle, Montez Ellington jumped out and started fighting them. The police managed to wrestle him to the ground and take him into custody. His clothing matched that given by the eyewitnesses mentioned in Paragraph #17, above, and the clothing shown in the surveillance videos. The shaggy hair also appeared the same.

25. I.B. (male) was the individual that was seen in the surveillance videos standing outside of the GMC Acadia in which C.C. was shot. He told police that he had been having issues with Montez Ellington before the night of the shooting. He was sitting in the front passenger seat of the vehicle where a bullet went into the headrest.
26. Benjamin Daugherty and Tracy Jones reported that during the early morning hours of July 23, 2021, they observed a young looking, bi-racial male wearing black shorts and a dark colored t-shirt with "frizzy" or "shaggy" hair running east in the alley near 14th Street and across 14th Street. Benjamin reported seeing something in the left hand that he thought was a gun but could not be sure.
27. I.A. (male), a cousin of Montez Ellington, told police that at around 2:00 a.m. on the day of the shooting, Montez told him that he had shot at I.B. (male), but that he thought he had hit I.B.'s mother instead. Later, when Snapchat videos were circulating indicating that C.C. had been the person shot, I.A. said that Montez told him he had shot C.C.
28. Montez Ellington was arrested at approximately 1500 hours on July 23, 2021, and was taken to the Vigo County Juvenile Justice Center.
29. On July 26, 2021, Juvenile Probation Officer Michael Underwood, who already had Montez Ellington on probation for prior offenses, conducted a preliminary inquiry, which was filed with the court on August 2, 2021.
30. A detention hearing was held on July 27, 2021, during which the court found probable cause that Montez Ellington had committed murder and found that further detention was essential to protect the juvenile or the community.
31. On August 2, 2021, the Vigo County Prosecutor filed a petition alleging delinquency against Montez Ellington, alleging the following delinquent acts that would be felonies if committed by an adult, to-wit: Count 1 - Murder (I.C. 35-42-1-1(1)); Count 2 - Attempted Murder (I.C. 35-41-5-1(a) and I.C. 35-42-1-1(1)); and Count 3 - Criminal Recklessness (I.C. 35-42-2-2(a) and (b)(2)).

32. On August 3, 2021, the Vigo County Prosecutor filed a motion to waive juvenile court jurisdiction, pursuant to I.C. 31-30-3-4.
33. On December 29, 2021, the Vigo County Prosecutor filed an amended motion to waive juvenile court jurisdiction, pursuant to I.C. 31-30-3-4 and I.C. 31-30-3-2.
34. The minor has remained in detention from the date of his arrest to the time of the waiver hearing.
35. On February 7, 2022, while incarcerated in the Vigo County Juvenile Justice Center, Montez was seated at a table with other detainees. One of the detainees had removed an article about C.C. from the local newspaper and rolled it up, simulating a hand-rolled cigarette. At that time, Correctional Officer Amanda Sharp overheard Ellington say, "I am going to smoke this like I smoked C.C." Video surveillance from the Juvenile Center was later reviewed by Sgt. Brett Doan Jr. who observed the newspaper article being torn from the newspaper and rolled up and further observed the interaction between Ellington, the other detainees, CO Sharp and another correctional officer. A copy of this article taken from the Terre Haute TribStar website was entered as State's Exhibit #22.
36. Montez's early childhood was marked with trauma including neglect, psychological trauma, delayed motor and speech milestones. The Social History completed by Janet Dowling detailed dysfunction of both Montez's nuclear and extended family including, but not limited to, intellectual disability of both parents along with substance abuse, pervasive violence and criminal conduct.
37. Dr. Corby Bulp completed a thorough neuropsychological examination of Montez prior to the waiver hearing. Dr. Bulp's findings include the following diagnoses: mild intellectual disability, other specified trauma-related disorder, other substance use disorder, and autism spectrum disorder and organic brain damage and memory impairment. Based upon these deficits, Dr. Bulp testified that Montez Ellington functions at a level well below his chronological age.
38. In consideration of the diagnoses, tests and records provided to him for review, he arrived at two recommendations: (1) that the Respondent receive treatment that includes assistance with impulsivity, problem

solving skills, social deficits, and communication delays; and (2) that he would likely benefit from a treatment facility which offers therapeutic intervention in a secure unit. He then provided six (6) suggested facilities that may provide such therapeutic intervention and security, including the Youth Opportunity Center (YOC) and Gibault Children's Services.

39. Dr. Bubp acknowledged on cross-examination that he had not received certain records that could assist him in his evaluations, such as other psychological evaluations that were conducted for the Respondent and records related to his other cases and disciplinary episodes at the juvenile center. He did advise that he would have not relied much on such records and he believed his testing to be more thorough than what would likely have been done by other professionals. He also acknowledged that he had not spoken with any of the six (6) service providers he noted in his report to see if any of them would accept someone with this level of violent offense and with a history and a continued pattern of violent and aggressive acts. Lastly, he acknowledged that Respondent was at a higher risk for recidivism because "Offenders with ID (Intellectual Disability) may demonstrate deficits in information processing and communication skills, as well as deficits in self-control, and increased impulsive behavior placing them at a higher risk for criminal offense." Bubp, p. 14.

40. The court takes judicial notice of another juvenile delinquency case filed seven months before the murder. In December 2021, Montez admitted to a delinquency petition in Cause No. 84C01-2011-JD-1399 containing Count I Intimidation and Count II Resisting Law Enforcement. The intimidation charge, which would have been a felony if committed by an adult, and which Montez admitted to committing, stated in pertinent part that the minor:

"....did then and there communicate a threat to another person with the intent that the other person be placed in fear of retaliation for a prior lawful act, to-wit: Montez Ellington did verbally threaten to shoot Officer Pupilli of the Terre Haute Police Department (and his family) for arresting him while Officer Pupilli was performing his duties as a Terre Haute Police Officer...."

41. The very next month after entering an admission to this intimidation of a police officer, Montez was arrested again for resisting a law enforcement officer. The court takes judicial notice of Cause No. 84C01-2101-JD-37, in which Montez admitted to forcibly resisting two police officers as they tried to place him in handcuffs.

42. Juvenile Probation Officer Michael Underwood was Montez's supervising probation officer. He reported that he has been a juvenile probation officer for nearly twenty-five (25) years, and been working with kids in Vigo County for twenty (20) of those years. Underwood reported that the Respondent had originally been supervised by another officer, but due to his adjudications of delinquency, he was placed on strict formal probation and Underwood was assigned as his probation officer. Underwood confirmed that the Respondent was on probation at the time of his arrest for the murder of C.C. and, that as part of this probation, he had been receiving services with Ireland Home-Based services for his aggressive behavior and anger.
43. Mr. Underwood reported that, not only did respondent have a battery offense as part of his supervision, the respondent also had other violent acts that did not result in referral to the criminal justice system, including an incident at Sarah Scott Middle School where he picked up a female student and threw her to the ground during a basketball game, breaking her back. While the school officials concluded that Montez had not intended to hurt the girl, it was a noteworthy example of his aggression and lack of impulse control.
44. Respondent's probation officer also reported that he had rarely observed any stuttering by Montez and that he felt Montez was capable of utilizing services and procedures, including those available to him while in detention. Specifically, Mr. Underwood noted that Montez would avail himself of the opportunity to make requests for things such as visits and phone privileges. Norm Loudermilk, the executive director of the Juvenile Justice Center, echoed this assessment when he testified that Montez was able to utilize the kiosk system available to detainees to make both complaints and requests.
45. Mr. Underwood testified that he had been provided with the list of recommended service providers in Dr. Bubb's report. Part of Mr. Underwood's common responsibilities is to find facilities that will accept his probationers for residential placement. He advised that he had reviewed the six service providers on the list, that he was familiar with each one, and that in his experience of working with those facilities they would not certainly not accept the Respondent because of the nature of his charges, his violence and aggression prior to his arrest, and his ongoing violent and aggressive behaviors while being detained. Specifically, Mr. Underwood advised that he even attempted to contact some of the facilities to see if they would accept someone in the Respondent's situation. The Youth Opportunity Center, the first suggested facility in Dr. Bubb's report, had responded and advised him

that they would not accept someone with Ellington's charges and history of aggression.

46. Mr. Underwood also reported that the difficult childhood the respondent experienced is, unfortunately, not uncommon in the children that he has supervised over his lengthy career. However, he did report that this is the first one that has ever been accused of killing someone while a juvenile.
47. While a series of officers of the detention center recounted multiple incidents where Montez, while incarcerated, had lashed out in aggressive, unprovoked attacks against fellow detainees, none of the officers were aware of any bullying of Ellington by other detainees, although they acknowledged that verbal sparring among detainees is commonplace.
48. On September 23, 2021, Montez was observed striking another detainee in the West dayroom while the detainee was walking back to his cell. The detainee did not instigate the attack and did not respond to Montez's attack.
49. On December 5, 2021, Montez was observed arguing with another detainee in the West dayroom when he suddenly attacked and began striking the other detainee with a closed fist. The other detainee did not physically respond to the attack and did not punch back. An officer secured the Montez against the wall in an attempt to control the situation. Montez then broke away from the detention officer and resumed his assault on the other detainee. The detention officer ultimately secured the Montez and escorted him back to his cell.
50. In an apparent planned attack, on January 23, 2022, Montez and another detainee both rushed from their cells at the same time and began repeatedly striking a third detainee in his face and upper torso. The attacked detainee did not fight back.
51. The evidence established that through individual therapy, school services, Department of Child Services and juvenile probation, a laundry list of services were made available to Montez and his familial caretakers. These services included speech therapy beginning at four years of age, individualized educational programming (IEPs) during school, and mental

health services through Hamilton Center, Harsha Behavioral Health and Ireland Home-Based Services.

52. The failure of some of these services appears to have been caused, in part, by his unstable home life and the failure of the adults around him to engage him in these options. There were other services, such as schooling, speech therapy and services from Ireland home-based services, in which Montez did engage, but without successfully utilizing the skills and tools he had been provided.

53. For example, as a condition of his juvenile probation, in the months prior to his arrest for this offense, Montez was participating in services with Ireland home-based services related to his anger. In an email report sent from Haley Hedden to Juvenile Probation Officer Michael Underwood on July 22, 2021, it was reported that she had met with the respondent on July 21, 2021 and that "Montez is maintaining services and is refraining from fighting and has been utilizing his coping skills of taking deep breaths, taking a walk, and removing himself when he gets upset." During this session, the provider and the Respondent discussed that he would "walk away" if people that had talked bad about his family engaged with him. Less than 48 hours later, the Respondent fired five (5) shots at a carful of people without immediate provocation, allegedly because of a fist fight that took place days before and rumors of more trouble being threatened from some of the same people.

Relevant Statutes

Indiana Code 31-30-3-1. Waiver of jurisdiction defined.

Waiver of jurisdiction refers to an order of the juvenile court that waives the case to a court that would have jurisdiction had the act been committed by an adult.

Waiver is for the offense charged and all included offenses.

35-31.5-2-168. Included offense.

"Included offense" means an offense that:

(1) is established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged;

(2) consists of an attempt to commit the offense charged or an offense otherwise included therein; or

