

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 29 MAP 2019

COMMONWEALTH OF PENNSYLVANIA,
Appellee,

v.

NAZEER TAYLOR,
Appellant.

BRIEF OF JUVENILE LAW CENTER AS *AMICUS CURIAE*
IN SUPPORT OF APPELLANT NAZEER TAYLOR

Appeal from the Memorandum Opinion and Order of the Superior Court issued September 10, 2018, indexed at Superior Court Docket Number 856 EDA 2017, affirming the judgment of sentence imposed by the Honorable William R. Carpenter, in the matter indexed in the Montgomery County Court of Common Pleas at CP-46-CR-0003166-2014.

Marsha L. Levick, ID No. 22535
Riya Saha Shah, ID No. 200644
JUVENILE LAW CENTER
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
(215) 625-0551
mlevick@jlc.org
rshah@jlc.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 1

ARGUMENT 2

 I. NOTWITHSTANDING THE COURT’S CONSIDERATION OF
 OTHER STATUTORY FACTORS, THE JUVENILE COURT’S
 DECISION TO CERTIFY TAYLOR WAS CONTAMINATED
 BY THE VIOLATION OF HIS CONSTITUTIONAL RIGHT
 AGAINST SELF-INCRIMINATION..... 2

 A. Certification Proceedings Must Comport With Due Process; Any
 Application Of The Statute That Requires Waiver Of A
 Constitutional Right Is Invalid 3

 B. 42 Pa.C.S. § 6355 Does Not Require A Consideration Of The
 Juvenile’s Willingness To Take Responsibility For The Alleged
 Offense..... 4

CONCLUSION 8

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Commonwealth v. Batty</i> , 393 A.2d 435 (Pa. 1978).....	3, 4
<i>Commonwealth v. Bethea</i> , 366 A.2d 262 (Pa. Super. 1976)	7
<i>Commonwealth v. Bethea</i> , 379 A.2d 102 (Pa. 1977).....	7, 8
<i>Commonwealth v. Brown</i> , 26 A.3d 485 (Pa. Super. 2011)	2, 5, 6
<i>Commonwealth v. Ghee</i> , 889 A.2d 1275 (Pa. Super. Ct. 2005).....	3
<i>Kemplen v. Maryland</i> , 428 F.2d 169 (4th Cir. 1970)	3
<i>Kent v. United States</i> , 383 U.S. 541 (1966).....	3, 4
<i>In re William M.</i> , 196 P.3d. 456 (Nev. 2008).....	5
Statutes	
42 Pa.C.S. § 6322.....	4
42 Pa.C.S. § 6355.....	4, 5, 6

STATEMENT OF INTEREST OF AMICI CURIAE¹

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of *amicus* briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values.

SUMMARY OF ARGUMENT

The trial court relied upon an impermissible and unconstitutional consideration when assessing Taylor's amenability to treatment in the juvenile justice system. Requiring a young person to assert his guilt violates his right against self-incrimination and his presumption of innocence. Such a violation of a constitutional right invalidates the entire certification decision.

¹ Pursuant to Rule 531, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

ARGUMENT

I. NOTWITHSTANDING THE COURT'S CONSIDERATION OF OTHER STATUTORY FACTORS, THE JUVENILE COURT'S DECISION TO CERTIFY TAYLOR WAS CONTAMINATED BY THE VIOLATION OF HIS CONSTITUTIONAL RIGHT AGAINST SELF-INCRIMINATION

The Superior Court concluded that the trial court improperly relied on Taylor's refusal to admit to his offenses in determining his amenability to rehabilitation. Notwithstanding, the court found that although "the juvenile court stated an impermissible consideration, based on all evidence presented at the hearing, and the totality of the reasoning provided by the juvenile court, the juvenile court did not abuse its discretion" to certify Taylor to adult court. (Superior Court Op. at 13-14.) The consideration of *any* unconstitutional factor taints the court's entire decision.

The trial court used Taylor's denial of guilt for the alleged offenses as a proxy for his lack of amenability to treatment as a juvenile. This interpretation was a misapplication of the law because there is no explicit or implicit requirement for a child to accept responsibility or admit to the charges in order to show his amenability to treatment in the juvenile system. Moreover, there is no prohibition in any Pennsylvania statute or court rule against using admissions obtained at pretrial hearings in any subsequent proceeding. *See Commonwealth v. Brown*, 26 A.3d 485, 499 (Pa. Super. 2011). Furthermore, as certification is a pre-adjudicatory hearing,

this was fundamentally unfair because it required Taylor to waive the presumption of his innocence at a later factfinding hearing in either the juvenile or adult system.

A. Certification Proceedings Must Comport With Due Process; Any Application Of The Statute That Requires Waiver Of A Constitutional Right Is Invalid

The trial court's decision to confer criminal jurisdiction over Taylor in the instant case was erroneous because it misinterpreted 42 Pa.C.S. § 6355 in violation of Taylor's rights to due process and fundamental fairness. A transfer or certification hearing has "tremendous consequences" in "determining vitally important statutory rights of the juvenile." *Kent v. United States*, 383 U.S. 541, 554, 556 (1966). "[N]othing can be more critical to the accused than determining whether there will be a guilt determining process in an adult-type criminal trial. The [outcome] can result in dire consequences indeed for the guilty accused." *Kemplen v. Maryland*, 428 F.2d 169, 174 (4th Cir. 1970). *See also Commonwealth v. Ghee*, 889 A.2d 1275, 1280 (Pa. Super. Ct. 2005); *Commonwealth v. Batty*, 393 A.2d 435, 439 n.3 (Pa. 1978) ("[I]n Pennsylvania, any juvenile at any waiver proceeding is entitled to the rights enumerated in *Kent*.").

Finding that certification to adult court is a "critically important" stage of the criminal process, the U.S. Supreme Court held that procedural requirements must be afforded by the state in order to ensure fundamental fairness and due process. *Kent*, 383 U.S. at 562. Although the Court refrained from mandating specific procedural

guarantees, it clearly held that once a hearing was granted as a matter of statutory right, as under 42 Pa.C.S. § 6322, such hearing must comport with basic due process and fundamentally fair principles. *Id.* Pennsylvania courts have reinforced this holding, requiring due process under both the Pennsylvania and U.S. Constitutions in transfer proceedings. *Batty*, 393 A.2d at 438-39. At a minimum, due process requires the court to interpret and apply statutory law as the legislature intended.

B. 42 Pa.C.S. § 6355 Does Not Require A Consideration Of The Juvenile’s Willingness To Take Responsibility For The Alleged Offense

Pursuant to Section 6355(a) of the Juvenile Act, after a petition has been filed alleging delinquency based on conduct that is designated a crime, the juvenile court “may rule that this chapter is not applicable and that the offense should be prosecuted” in criminal court. 42 Pa.C.S. § 6355(a). However, this determination must be made after consideration of the statutory factors, including the individual’s amenability to treatment in the juvenile system. 42 Pa.C.S. § 6322(a); 42 Pa.C.S. § 6355(a)(4). To determine “whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors: (I) age; (II) mental capacity; (III) maturity; (IV) the degree of criminal sophistication exhibited by the child; (V) previous records, if any; (VI) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitated the child; (VII) whether the child can be rehabilitated

prior to the expiration of the juvenile court jurisdiction; (VIII) probation or institutional reports, if any; (IX) any other relevant factors.” 42 Pa.C.S. § 6355(a)(4)(iii)(G). The trial court improperly considered Taylor’s refusal to admit to his charges in its calculus. Prior to the introduction of evidence or any type of adjudicatory hearing, the court may not consider the defendant’s maintenance of his innocence as evidence of his inability to be rehabilitated in the juvenile system. Asserting innocence is not a relevant factor to amenability. *See Brown*, 26 A.3d at 505 (trial court’s interpretation of transfer statute violated individual’s Fifth Amendment right against self-incrimination because defendant maintained his innocence in court-ordered evaluation).

In *Brown*, the Superior Court relied upon a Nevada Supreme Court decision raising a similar issue. *Brown*, 26 A.3d at 497. *See also In re William M.*, 196 P.3d. 456 (Nev. 2008). The Nevada statute presumed mandatory prosecution in adult court for youth 14 or older charged with certain offenses. *In re William M.*, 196 P.3d. at 457. In order to rebut the presumption of transfer, the youth had to prove that the crime was a result of substance abuse or emotional or behavioral problems, which necessitated an admission to the crime. *Id.* at 464. The Supreme Court found that such a scheme compelled self-incrimination and was therefore invalid. *Id.* The *Brown* court reasoned that *William M.* was persuasive because the court essentially required admission in order for the defendant to remain in juvenile court, which was

an unconstitutional infringement on his Fifth Amendment rights. *Brown*, 26 A.3d at 497. The court reasoned that “a [statutory] procedure which offers an individual a reward for waiving a fundamental constitutional right, or imposes a harsher penalty for asserting it, may not be sustained.” *Id.* at 505 (alteration in original) (citing *Hynes v. Tomei*, 706 N.E.2d 1201, 1204 (1998)).

At Taylor’s certification hearing, the court indicated that it reviewed all the statutorily required factors, “including . . . the impact of the offense on the victim, the impact of the offense on the community, the threat to the safety of the public, the nature and circumstances of the offense, and the degree of culpability.” (Superior Court Op. at 5.) The court also considered Taylor’s amenability to treatment, a statutorily required factor. (*Id.*) *See also* 42 Pa.C.S. § 6355(a)(4)(iii)(G). In doing so, the court expressed concern with Taylor’s ability to make progress in treatment because he would not admit to the sex offenses for which he was charged.

If you’re going to go on the sex offenders’ treatment, it’s important that you admit, No. 1; examine your triggers, No. 2; talk about how you can avoid your triggers; and identify the depth of the problem. And here, we can’t identify the depth of the problem largely because we’re not admitting yet that there is a problem.

(Superior Court Op. at 6.) The juvenile court primarily relied upon an unconstitutional consideration.

This Court came to an identical result in an analogous context in *Commonwealth v. Bethea*. In *Bethea*, the defendant challenged his sentence based

on the trial court's penalizing him for exercising his right to a jury trial. *Commonwealth v. Bethea*, 379 A.2d 102, 103 (Pa. 1977). The Superior Court affirmed, holding that the trial court's partial reliance on the improper (and unconstitutional) consideration of the demand for a jury trial when fixing the defendant's sentence, along with other *proper* factors, did not require reversal. *Commonwealth v. Bethea*, 366 A.2d 262, 265 (Pa. Super. 1976), *vacated*, 379 A.2d 102 (Pa. 1977). This Court disagreed, reasoning that the "principle is premised primarily upon the rationale that the right to a trial by jury is a fundamental one, constitutionally guaranteed to all criminal defendants, and that a practice which exacts a penalty for the exercise of the right is without justification and unconstitutional." *Bethea*, 379 A.2d at 104. The Court further reasoned that this would have a chilling effect on any further exercise of the right to trial by jury. *Id.*

In *Bethea*, the Court found:

[T]he correct inquiry in a case such as this is not whether the trial court considered legitimate factors in fixing sentence, but whether it considered only such factors. This is so because any increase in sentence which results from a defendant's decision to put the state to its proof puts a price upon the exercise of a fundamental constitutional right, and hence is unjustified. Thus, a sentence based in part on an impermissible consideration is not made proper simply because the sentencing judge considers other permissible factors as well.

Bethea, 379 A.2d at 106.

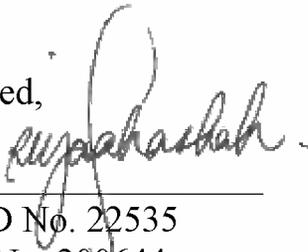
Here as well, the trial court's consideration of the proper statutory factors

when making its decision does not sanitize the massive “impermissible consideration.” (Superior Court Op. at 14.) “[I]t is sufficient to render a sentence invalid if it reasonably appears from the record that the trial court relied in whole or in part upon [an erroneous] factor. *Bethea*, 379 A.2d at 106-107. The trial court’s reasoning that Taylor’s refusal to incriminate himself required certification was a per se abuse of discretion. Even if the court’s consideration of other factors demonstrating amenability led to the judge’s certification, any reliance on an unconstitutional consideration invalidates the decision.

CONCLUSION

WHEREFORE, for the foregoing reasons, we urge this Court to invalidate Taylor’s certification to the adult court.

Respectfully submitted,


/s/ Marsha L. Levick

Marsha L. Levick, ID No. 22535

Riya Saha Shah, ID No. 200644

JUVENILE LAW CENTER

1315 Walnut Street, 4th Floor

Philadelphia, PA 19107

(215) 625-0551

mlevick@jlc.org

rshah@jlc.org

Counsel for Amicus Curiae

Dated: July 9, 2019

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 531 and 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 1,799 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

Dated: July 9, 2019

/s/ Marsha L. Levick
Marsha L. Levick