

Summary of SC92979, *State of Missouri v. LeDale Nathan*

Appeal from the St. Louis circuit court, Judge Robert H. Dierker

Argued and submitted April 30, 2013; opinion issued July 30, 2013

Attorneys: Nathan was represented by Jessica M. Hathaway of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Evan J. Buchheim of the attorney general's office in Jefferson City, (573) 751-3321. The American Civil Liberties Union, which filed a brief as a friend of the Court, was represented by Stephan Douglas Bonney of the ACLU Foundation of Kansas and Western Missouri in Kansas City, (816) 756-3113, and Anthony E. Rothert and Grant R. Doty of the ACLU of Eastern Missouri in St. Louis, (314) 652-3114.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man was convicted of multiple charges – including first-degree murder – arising from a crime he committed when he was 16 years old. He challenges the convictions relating to the death of one person, and the state challenges the dismissal of certain counts pertaining to one of the survivors. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the convictions but remands (sends back) the case for resentencing. The statutory juvenile certification process is not unconstitutional, the trial court did not abuse its discretion or otherwise err in rejecting the man's claim for a new trial or ruling on a certain evidentiary matter, and the evidence was sufficient to find the man deliberated before the person who died was shot. Further, because the sentence in the man's case – which was pending on appeal when the United States Supreme Court issued its decision in *Miller v. Alabama* – made no individualized consideration of the myriad of factors discussed in *Miller*, the man's sentence of life in prison without parole violates the Eighth Amendment, and he must be resentenced in accordance with *Miller*.

Facts: LeDale Nathan was charged with first-degree murder and multiple counts of burglary, assault, robbery, kidnapping and armed criminal action, all arising out of a home invasion committed by Nathan and an accomplice, both armed, in St. Louis in October 2009, when Nathan was 16 years old. At one point during the invasion, an altercation ensued when Nathan tried to get one of the home's occupants into the basement, and gunshots were fired. One person (an adult granddaughter of the home's owner) was killed, and three additional people – including one of the homeowner's daughters – were wounded. The juvenile officer filed a delinquency petition with the juvenile division in St. Louis city alleging Nathan's age, some of the acts committed, and that some of these acts would constitute felonies if committed by an adult. Later, the juvenile officer moved to dismiss the petition and sought a determination of whether Nathan should be dealt with under the juvenile code or whether the juvenile division should relinquish its exclusive jurisdiction over Nathan so he should be charged and tried – as an adult – in circuit court. The juvenile division relinquished jurisdiction over him, and the state charged Nathan with 26 criminal counts. Nathan moved to dismiss four counts based on harm to the granddaughter and four other counts based on harm to the daughter, alleging the juvenile division had not "certified" these particular charges. The trial court overruled Nathan's motion, and the jury found Nathan guilty of all 26 charges. The court sentenced Nathan to life in prison without the

possibility of parole for the murder conviction; to 15-year sentences for the burglary, assault, robbery and kidnapping convictions, to be served consecutively to each other and to the sentence for murder; and to 11 sentences of life with the possibility of parole for the armed criminal action convictions, to be served concurrently with each other and with the other sentences. The court dismissed the remaining four counts pertaining to crimes against the daughter, determining it lacked jurisdiction over those crimes because the daughter was not named in the juvenile officer's petition against Nathan. The state appeals the dismissal of those charges, and Nathan appeals the court's failure to dismiss the four charges relating to the granddaughter.

AFFIRMED AND REMANDED.

Court en banc holds: (1) The trial court erred in dismissing the charges relating to the daughter. The juvenile certification procedure in section 211.071, RSMo, pertains to individuals – not to specific conduct, crimes or charges. Under that procedure, the juvenile division may dismiss the petition and transfer the child to a court of general jurisdiction to be prosecuted under the general law. When that occurs, the juvenile division's jurisdiction over the child "is forever terminated" unless the child is found not guilty in the circuit court. Nothing in the statute allows the juvenile division to dismiss some portions of a petition and proceed with others, and nothing allows the juvenile division to relinquish jurisdiction over a child for some conduct but retain it for other conduct. If, as here, jurisdiction is relinquished, the state may bring whatever charges it believes are justified, regardless of whether those charges – or their underlying facts – were included in the juvenile petition. Accordingly, the court's decision not to dismiss the counts pertaining to the granddaughter was correct, but it erred in dismissing the counts pertaining to the daughter. Because Nathan already has been tried and found guilty of the counts that were dismissed improperly, he must be sentenced for those counts on remand.

(2) The certification proceedings are not unconstitutional. As noted in paragraph 1, above, the certification process in section 211.071 pertains to the juvenile, not the allegations in the delinquency petition. The juvenile division is not required to find these allegations to be true, nor does it "assume" they are true, and subsection 6 refers solely to the nature of the offenses alleged, not whether the juvenile did – or did not – commit them. The United States Supreme Court has held that a juvenile certification process is constitutional if it provides a hearing, the juvenile is given the right to counsel and access to his or her records, and it results in a decision that sets forth the basis for the decision to relinquish jurisdiction in a way that is sufficient to permit appellate review. A prior version of section 211.071 was held to be constitutional under that precedent, and subsequent amendments to the statute have not changed this. In addition, nothing in the statute suggests a requirement that a juvenile division should not be allowed to relinquish its exclusive jurisdiction unless a jury first finds, beyond a reasonable doubt, that the juvenile actually committed the conduct alleged in the petition. No court has found such a constitutional requirement, and Nathan provides no persuasive authority for this proposition. As such, this Court declines to impose such a requirement.

(3) The trial court did not abuse its discretion in rejecting Nathan's claim that he should receive a new trial on the ground that the state did not disclose that a witness had prior municipal violations. The state must disclose any record of "prior criminal convictions," but a municipal ordinance violation is not a criminal conviction. Further, Nathan was not prejudiced by this

nondisclosure because he could not have used the ordinance violations to impeach the witness as they would have shed little light – if any – on the witness’s reputation for truth and veracity and, therefore, would have had no likelihood of changing the outcome of the trial.

(4) The trial court did not err in failing to disclose a sealed memorandum pertaining to a witness that it reviewed in chambers, determining the facts in the memorandum were not such that they were required to be disclosed nor could they be used to impeach the witness. Nathan fails to explain why he was entitled to this information or why the trial court or the state had any obligation to disclose it, and Nathan’s appellate counsel did not include the document – even under seal – as part of the record on appeal. A defendant is not entitled to information on the mere possibility that it might be helpful but must make some plausible showing how the information would have been material and favorable.

(5) The evidence was sufficient to find that Nathan deliberated before killing the granddaughter. This Court must review the evidence in the light most favorable to the jury’s finding of guilt. Under the instruction given to the jury, regardless of whether the jury believed Nathan or his accomplice was the actual shooter, the evidence was sufficient for a reasonable juror to find that Nathan’s actions came after adequate deliberation.

(6) There was no plain error in giving the jury instruction (discussed in paragraph 5, above), which was not vague or misleading. Both the language and the context of the instruction are clear.

(7) While Nathan’s appeal was pending, the United States Supreme Court held in *Miller v. Alabama* that the Eighth Amendment forbids sentencing a juvenile to life in prison without parole when there has been no consideration of the particular circumstances of the crime or the offender’s age and development. For the reasons set forth in *State v. Hart*, decided concurrently with this case, this Court holds that Nathan’s sentence of life without parole for first-degree murder violates the Eighth Amendment because it was imposed with no individualized consideration of the myriad of factors decided in *Miller*. As such, Nathan must be resentenced in accordance with the *Miller*’s requirement that the sentencer consider whether such a sentence is just and appropriate in light of Nathan’s age, maturity and the other factors discussed in *Miller*.

(8) As set forth in *Hart*, if the sentencer on remand is persuaded beyond a reasonable doubt that sentencing Nathan to life in prison without parole for first-degree murder is just and appropriate under all the circumstances, that sentence is constitutional and must be imposed. If the state fails to persuade the sentencer on this point, then section 565.020, RSMo – as applied to Nathan – does not provide a constitutionally permissible punishment. In that event, the trial court must set aside the jury’s verdict finding Nathan guilty of first-degree murder and enter a finding that Nathan is guilty of second-degree murder. It also must vacate his conviction for armed criminal action predicated on first-degree murder and instead find him guilty of armed criminal action predicated on second-degree murder. Nathan then should be sentenced for these two crimes within the applicable statutory punishment ranges.