

Juvenile Cases: April 2007

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Commonwealth v. Dillon D. 448 Mass. 793 (2007) – the SJC held that the public safety exception to the *Miranda* rule applied where a 13 year old possessed over 50 bullets at school. The juvenile prevailed, at the trial level, on a motion to suppress. The Commonwealth appealed and the appeals court reversed the suppression order. The juvenile's application for further appellate review was granted.

A school administrator saw the juvenile, in a middle school, with a clear plastic bag containing over 50 bullets, and observed the juvenile show this plastic bag to other students. The administrator took the bullets from the juvenile and told him to go to the main office. This information was conveyed to a school police officer, who arrived at the main office and conducted a pat down of the juvenile for weapons. No weapon was found. *Miranda* warnings were given to the juvenile in front of the administrator and the juvenile stated he did not have a gun.

Approximately 25 to 30 minutes later the juvenile's mother and grandmother arrived at the school. Neither of these women were provided an opportunity to be alone with the juvenile and were not informed of the juvenile's *Miranda* rights. On this same day the juvenile was expelled from school. After the expulsion hearing the juvenile showed the school police officer where the gun was. The gun was in an outdoor electrical box in a residential area approximately 25 yards from the school and two feet from a home.

The long standing rule that juveniles under the age of fourteen must consult with an interested adult before a waiver of *Miranda* can be valid did not apply in this case. The court reasoned that there was an emergency situation and the school police officer had to protect all the children in the middle school and the residence in the neighborhood. "The juvenile's possession of over 50 bullets alone was enough to support the inference that a gun was in close proximity and to invoke the public safety exception to the requisite *Miranda* warnings."

Commonwealth v. Ogden O. 448 Mass. 798 (2007) – Ten year old could form the requisite intent for the crime of mayhem and trial counsel was not ineffective for failing to present evidence to the jury that the juvenile lacked the capacity to form the specific intent to commit mayhem.

While the juvenile and a friend were on a front porch, the victim walked by and asked the juvenile if he had seen a particular friend. The juvenile responded "no" whereupon the victim turned and walked away. The victim then felt liquid on his leg and told the juvenile and his friend to "stop wetting" him. The juvenile then

threw a flaming piece of paper on the victim. As a result the victim suffered serious burns, required several months of treatment and was left with a large scar on his lower leg.

The SJC rejected the argument that there was insufficient evidence to prove that the ten year old juvenile acted with the specific intent to maim. The court referenced a number of Massachusetts cases that state specific intent can be inferred from the evidence from which the injuries arose and the nature of the injuries; these were all adult cases. In this case, the court found that the jury could infer the juvenile's specific intent from the juvenile's actions and the victim's injuries.

The court discounted the juvenile's age as a factor to consider in forming the requisite intent for a crime. Counsel for the juvenile raised the issue that Massachusetts has never clearly decided whether the common law presumption that children under age fourteen are presumed incapable of committing particular crimes. While the SJC agreed that this issue has not been definitively decided, the court stated that our juvenile code (G.L. c. 119 § 52-84) was enacted to address delinquent children in a way that affords them greater protections than adults. "This system has rendered a defense of incapacity based on youth, to the extent that it ever may have existed in the Commonwealth, inapplicable to current juvenile proceedings." According to the court, our statutes dealing with delinquent children are to be liberally construed and children brought before the court should not be treated as criminals but as children in need of aid and encouragement. "The law presumes different levels of responsibility for juveniles and adults and, realizing that juveniles frequently lack the capacity to appreciate the consequences of their actions, seeks to protect them from the possible consequences of their immaturity." Citing Commonwealth v. A Juvenile, 389 Mass. 128, 132 (1983). The court further stated that a juvenile might not have the maturity to fully appreciate the consequences of his actions, but that does not mean he can not form the specific intent. The court notes in footnote six that expert testimony based on "scientific evidence" can be presented on this issue.

The court also rejected the juveniles claim that his trial counsel was ineffective for his failure to present to the jury the issue of the juvenile's incapacity and his failure to seek funds for a psychological evaluation regarding the juvenile's ability to understand the consequences of his actions. The juvenile did have a competency evaluation conducted by the juvenile court clinic and he was found competent and on appeal no information from that evaluation was offered to suggest that the juvenile could not form the specific intent.

In addressing an ineffective assistance of counsel claim, the court noted "that a claim of ineffective assistance of counsel raised on direct appeal, rather than through a motion for a new trial, is a claim "in its 'weakest form' because 'it is bereft of any explanation by trial counsel for his actions and suggestive of strategy contrived by a defendant viewing the case with hindsight. Only in

exceptional circumstances will an appellate court be able to resolve an ineffective assistance claim on direct appeal, where the factual basis for such a claim is indisputable from the trial record.”