

Juvenile Jurisdiction

**STATE OF WASHINGTON, Respondent, v. BARRY D.
LOUKAITIS, Appellant. No. 17007-1-III, COURT OF APPEALS
OF WASHINGTON, DIVISION THREE, PANEL FIVE, 1999
Wash. App., November 16, 1999 , Filed**

Fourteen-year-old Barry Loukaitis stormed his eighth grade algebra class, killed two students and a teacher, and wounded a third student. He was convicted in a jury trial of aggravated murder, assault and kidnapping, and he was sentenced to life without parole. On appeal he challenges the juvenile court's decision to decline jurisdiction and contends he is entitled to reversal due to the prosecutor's conflicts of interest, the admission of his post-arrest statements, and the admission of other prejudicial evidence. He also assigns error to the trial court's orders amending the information and to his sentence. We affirm.

Facts

On Friday, February 2, 1996 , Frontier Junior High School in Moses Lake started two hours late due to intense cold weather. All classes were shortened to make up for the delay. Mr. Loukaitis did not attend morning classes. Instead, he armed himself with his father's 30/30 lever-action rifle, a .22 revolver and a .25 semiautomatic pistol. All three guns were loaded. He strapped to his chest and waist three belts of additional ammunition and packed a speed loader for the revolver. Over this arsenal he wore a long black trench coat with the inside pocket removed so that he could carry the rifle unseen. Thus armed, he walked to school.

Outside his fifth period algebra class, Mr. Loukaitis cocked the lever-action rifle. He then stepped into the room, shot Manuel Vela almost point blank, and then shot Arnold Fritz and Natalie Hintz as they tried to drop to the floor beside their desks. When the teacher, Leona Caires, exclaimed, "No, no," Mr. Loukaitis turned and shot her in the back as she tried to hide behind her desk. Mr. Vela and Ms. Caires died almost

instantly. Mr. Fritz, shot through the chest, stood up and walked to the back of the classroom, then lay on the floor and struggled to breathe. Ms. Hintz, injured in the arm and chest, fell to the floor and began to scream.

Mr. Loukaitis backed into a corner of the room blocked from the windows and door. The school physical education teacher, Jonathon Lane , heard the gunshots and ran into the classroom. When he saw Mr. Loukaitis holding the rifle, Mr. Lane dived behind the teacher's desk. Mr. Loukaitis told him to stand up or he would shoot another student. Mr. Lane stood up and then asked Mr. Loukaitis if Ms. Hintz could be removed from the room. Eventually, Mr. Loukaitis allowed Mr. Lane to help Ms. Hintz out the door and later let out a diabetic girl having blood sugar problems. When a student called out that Mr. Fritz was in bad shape, Mr. Loukaitis said something like, "Just let him die," but then allowed Mr. Lane and two other students to drag Mr. Fritz out of the room.

By this time, the police had been summoned and were attempting to talk with Mr. Loukaitis through the door. Mr. Loukaitis calmly began to organize the class. He read off the class roll and told the students one by one to arrange themselves in seats at the back of the room. He seemed irritated by the police interruptions, yelled that he would start killing people if the officers did not shut up, and threw the telephone to the floor when the police called. At one point he told the class, "This sure beats the hell out of algebra, doesn't it?"

After the class was organized, Mr. Loukaitis said he needed a hostage because of snipers. He then pulled out a black plastic bag, fixed it over the end of the rifle muzzle with rubber bands, and told Mr. Lane to put it in his mouth. Mr. Lane resisted. With repeated urging, he pretended to comply, grabbed the gun barrel, pinned Mr. Loukaitis against the wall, and yelled for the students to run.

As the students rushed out of the room, the police pushed through them and tackled Mr. Loukaitis. The officers handcuffed Mr. Loukaitis, removed his guns and ammunition, read him his rights and took him to

the station. In a later search of the scene, they discovered earplugs Mr. Loukaitis had worn during the shootings. After giving a taped interview to the police, Mr. Loukaitis went to his cell, curled up on his bunk, and fell asleep with a blanket over his head. Mr. Fritz died later that day at the hospital. Ms. Hintz underwent extensive surgery and survived, although she almost lost her arm and remains impaired.

On February 5, 1996 , Mr. Loukaitis was charged in the juvenile department of the Grant County Superior Court with 3 counts of first degree aggravated murder. Defense motions to seal the record were denied and the State moved to decline juvenile court jurisdiction. After various continuances, the declination hearing was held in September 1996, and juvenile court jurisdiction was declined. The information filed September 27 in adult court added 1 count of first-degree assault to the charges. On October 31, the State filed an amended information containing 22 counts, including 16 counts of kidnapping and 1 count of attempted murder. Two more amendments followed, one in August 1997 and another during trial in September 1997.

Trial was held in King County from August 15 to September 24, 1997 . The jury found Mr. Loukaitis guilty of 2 counts of first degree aggravated murder (Mr. Vela and Mr. Fritz), 1 count of second degree murder (Ms. Caires), 1 count of first degree assault (Ms. Hintz), 16 counts of first degree kidnapping and 1 count of second degree assault (Mr. Lane). All counts included a firearm enhancement. He was sentenced to life imprisonment without parole. This appeal followed.

Declination of Juvenile Jurisdiction: Before the juvenile court conducts a hearing on the merits of a criminal case, the prosecutor, the juvenile or the court may file a motion requesting the court to decline jurisdiction and to transfer the juvenile for adult prosecution. In matters involving felony charges, the declination hearing must be held within 14 days after the information is filed unless the court for good cause extends the time. Mr. Loukaitis's declination hearing was finally held about seven months beyond the date required by JuCr 8.1(b). Review of the proceedings that

led up to the hearing indicates the delay was the result of numerous continuances requested by defense counsel and unexplained silence during other periods.

On February 5, 1996 , the State filed the information charging Mr. Loukaitis with 3 counts of aggravated first degree murder and moved to decline juvenile court jurisdiction. On the same date, Mr. Loukaitis moved to continue the declination hearing at least a month. The court denied the defense motion and set the hearing for February 20, 14 days after the information was filed. (February 19 was not included in the computation because it was an official court holiday.) On February 16, defense counsel filed a motion to have the two county superior court judges and the commissioner recuse themselves. When one judge refused to recuse himself on February 20, defense counsel filed an affidavit of prejudice. Another judge then assumed the bench that day and defense counsel renewed his recusal motion. Defense counsel then requested a continuance so a visiting judge could decide the recusal motion. The continuance was granted and on February 26 the visiting judge denied the recusal motion. The declination hearing was reset, without objection, for March 25.

On March 7, 1996 , defense counsel moved for a continuance to April 15 or for dismissal of the motion for the declination hearing. The declination hearing finally began on April 15, but was interrupted after a few days when the trial court granted the defense motion to seal the proceedings. Cowles Publishing Company and the State sought discretionary review and the Court of Appeals stayed the proceedings on April 19. On July 2, the Court of Appeals reversed the order sealing the proceedings. Thereafter, the declination hearing was set, without objection, to continue on August 19. Before that date, the State and Mr. Loukaitis filed a joint motion to disqualify the judge. On August 8, the trial judge recused himself and the parties were informed the next day that Judge Michael Cooper would conduct the declination hearing. The parties held a status conference on August 22, Mr. Loukaitis refused to agree with his counsel's request for a third continuance, and the hearing

was set for August 26. Mr. Loukaitis filed a motion to dismiss on August 22, on the grounds that the time to hold a declination hearing had expired. At court on August 26, however, Mr. Loukaitis changed his mind and asked for a continuance until September 23, 1996 . The hearing was finally completed in late September.

Not all of the transcripts from all of the hearings held February to September 1996 are contained in the record, but those available indicate Mr. Loukaitis's attorneys requested continuance after continuance to pursue dismissal of The Defenders, closure of the declination hearing to the public, and additional time for preparation. He appears to argue on appeal that the continuances do not meet the requirements of JuCr 8.1(b) because the court failed to use the magic words "for good cause." He does not, however, claim that the court abused its discretion in granting the continuances, and we find no indication in the record the continuances were granted for anything but good cause.

Mr. Loukaitis further contends the record does not support the juvenile court's decision to decline jurisdiction. RCW 13.40.110(2) allows the juvenile court to transfer a case to adult court upon a finding that declination would be in the best interest of the juvenile or the public. The court's decision is discretionary and we will reverse only for manifest abuse of that discretion.

When making its decision, the juvenile court must address the eight standards set out in *Kent v. United States*: (1) the seriousness of the charged offense and whether protection of the community requires prosecution in adult court; (2) whether the offense was committed in an aggressive, violent, premeditated or willful manner; (3) whether the offense was against persons or property; (4) the prosecutive merit of the case; (5) whether the defendant had an adult accomplice; (6) the defendant's sophistication and maturity; (7) the defendant's prior record; and (8) the prospects for adequate protection of the public and rehabilitation of the juvenile in the juvenile system. The court's findings must be supported by a preponderance of the evidence produced at the

declination hearing. Recognizing that the Kent factors are only intended to provide focus and guidance to the juvenile court, we do not require that each factor must support declination.

Here, the juvenile court considered on the record each of the eight Kent factors. It found that the factors supporting removal of the case to adult court included the facts that aggravated first degree murder and first degree assault are very serious offenses; the crimes were aggressively committed, premeditated and willful; the offenses were against persons; substantial evidence supports the charges; Mr. Loukaitis acted alone; and it is impossible to predict whether Mr. Loukaitis could be rehabilitated within the time available in juvenile detention. Factors supporting retention of jurisdiction in the juvenile court included only that Mr. Loukaitis, while above average in intelligence, is no more sophisticated and mature than others of his age, and he had no prior criminal history.

Mr. Loukaitis assigns error to the court's findings on factor 8. He contends his experts proved he would get the best psychiatric treatment in the juvenile system. Some defense witnesses did testify that Mr. Loukaitis improved dramatically while taking lithium and asserted that the juvenile system provided better treatment. Other experts, however, testified there was no scientific basis to predict his potential for future violence or rehabilitation. Given this evidence, we find nothing to indicate the court's decision was clearly untenable or manifestly unreasonable.

Affirmed.