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ARKANSAS COURT OF APPEALS

DIVISION I

No. CR-17-617

DEVON LAMAR WARD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: March 28, 2018

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTH DIVISION

[NOS. 60CR-16-2087; 60CR-16-2953;
60CR-16-2982; 60CR-16-3116]

HONORABLE BARRY ALAN SIMS,
JUDGE

AFFIRMED

RITA W. GRUBER, Chief Judge

Appellant Devon Ward appeals from the Pulaski County Circuit Court’s denial of his motions to transfer four cases to the juvenile division of circuit court.¹ Appellant argues on appeal that the circuit court’s denial of his motions to transfer was clearly erroneous. We affirm.

¹In case no. 60CR-16-2087, appellant was charged with aggravated robbery and theft of property stemming from an incident on April 17, 2016. In case no. 60CR-16-2953, appellant was charged with aggravated robbery, theft of property, and fleeing arising from an incident on July 2, 2016. In case no. 60CR-16-2982, appellant was charged with aggravated robbery and theft of property stemming from an incident on July 3, 2016. And in case no. 60CR-16-3116, appellant was charged with two counts of aggravated robbery, two counts of theft of property, and one count of kidnapping arising from incidents on June 25 and July 5, 2016. Pursuant to Arkansas Code Annotated section 16-90-120 (Repl. 2016), the State also requested that appellant’s sentence be increased in case nos. 60CR-16-2087 and 60CR-16-3116 because appellant had employed a firearm during the commission of a felony.

Based on being a sixteen-year-old at the time of the alleged offenses, appellant filed a motion to transfer to the juvenile division of the circuit court on March 8, 2017, in each case, and a joint hearing was held on March 9, 2017. At the hearing, Det. Michael Lundy of the Little Rock Police Department testified that he investigated an aggravated robbery incident that occurred on April 17, 2016. Lundy testified that officers responded to Sharks restaurant on Fair Park Blvd. in reference to a robbery and carjacking. Officers made contact with the victim, Robert Taylor, who gave them details of the incident. Taylor reported that he was approached by four or five black males, fifteen to seventeen years of age, who were armed with handguns and demanded his car keys. Taylor testified that they took his 2014 Nissan Sentra, and he notified the police. Lundy testified that Taylor described the person who approached him and did the majority of the talking as a black male with a chubby face, wearing black clothes and armed with a black revolver.

A car matching the description of the stolen vehicle was located at the Hall High School parking lot and was identified by the VIN as Taylor's vehicle. When appellant was developed as a suspect, Taylor positively identified appellant in a photo lineup as the aggressor. Based on the identification, Lundy obtained an arrest warrant, and appellant was arrested. After being Mirandized, appellant gave two statements to police. Initially, appellant denied being present, but he later admitted his presence and identified another person as the aggressor. At the time appellant was taken into custody at Hall High School, he had a backpack, which was left at the school. An inventory was subsequently taken of the backpack, which revealed a loaded revolver.

Detective Julio Gil of the Little Rock Police Department testified about two separate incidents he investigated—one at a Shell gas station called Super Galleria on Asher Avenue and the other outside an apartment complex on University Avenue. Gil stated that four individuals ran into the Super Galleria on June 25, 2016; one of the individuals was armed with what appeared to be a revolver. The individuals demanded money from the clerk, stole items, and “pretty much destroyed” the store. The clerk was not able to give a description of the individuals. Gil testified that he developed appellant as a suspect, and appellant came in and spoke to Gil. Gil explained that appellant acknowledged that he was involved in the robbery but claimed that he was “forced” to participate because he was the only one who knew how to drive. Gil testified that appellant said the others forced him to go inside the store and commit the robbery; appellant admitted to Gil that he stole items from the store and that he had smoked marijuana.

Gil also investigated a second robbery incident, which occurred on July 5, 2016, at an apartment complex on University Avenue. Gil explained that the victim, Raphael Johnson, was sitting in his vehicle outside the apartments when he was approached by two suspects who kidnapped him; the suspects got into Johnson’s car and made him drive around for 30 minutes until they pulled into a gas station on South University Avenue. Gil stated that Johnson was able to get out of the car and run away. The suspect who was in the passenger seat had pointed a gun at Johnson. Gil developed appellant as a suspect, and Johnson identified appellant as the individual in the passenger seat who had pointed the gun at him. Gil talked to appellant about this incident, and while appellant admitted involvement in another carjacking incident, he denied involvement in the incident involving Johnson.

Detective Grant Humphries of the Little Rock Police Department testified about two aggravated robberies allegedly involving appellant—one incident occurring on July 2, 2016, and the other on July 3, 2016. Humphries explained that on July 2, 2016, police responded at 4:15 a.m. to a report of a robbery that occurred in the parking lot of 6420 Colonel Glenn Road. The victim, Trelissa Morris, who worked for Metro PCS, was returning a company van to the business where her personal vehicle was parked. She was moving items from the van to her car. When she returned to her car after locking the van, she was approached by three young black males armed with handguns. Morris reported that the males robbed her and stole her car.

Humphries testified that Morris described the suspects as being around 5’9” tall and possibly in their teens; the one who approached the victim at her car door was described as having shoulder to chin-length dreads that were layered. Morris reported that the first subject approached her with a gun, demanded her keys, and told another one of the suspects to “show her his strap.” Humphries explained that based on his experience and training, the word “strap” is a street term for gun. Morris described the gun as a small revolver.

Humphries testified that Morris’s vehicle was located traveling north on North Shackelford Road. Officers attempted to stop the vehicle, and a pursuit ensued. The pursued vehicle crashed, and the occupants fled. Two of the suspects were taken into custody, one of which identified the third individual as appellant and the one who was at the driver’s door and drove the vehicle. Humphries testified that he showed Morris a photo spread, and she identified appellant and was ninety percent positive that he was the person who approached her with the revolver and pointed the gun at the door of her car. Humphries

also testified that when the vehicle was processed, multiple cell phones were found, including a Samsung cell phone found under the driver's seat. Humphries stated that the phone was locked but that the screen saver displayed a photo of appellant holding a firearm. A search warrant was obtained to recover information from the phones. Humphries testified that there were multiple photos that appeared to be appellant holding different guns.

Humphries testified that he investigated another aggravated robbery on July 3, 2016, which occurred at 6310 Colonel Glenn Road around 4:20 a.m. The victim, Laquienta Lockhart, reported that he had pulled into his apartment complex and observed three black males by the laundromat. They approached his vehicle and robbed him of his vehicle at gunpoint. Lockhart described one of the suspects as having short dreads, being around 5'5" to 5'8", weighing 140 to 150 pounds, and being armed with a black and silver semi-automatic handgun. Humphries stated that the vehicle was recovered at an apartment complex located at 1601 North Shackleford Road.

Humphries testified that appellant spoke to detectives about this incident; appellant admitted his involvement to Julio Gil while Gil had been talking to appellant about a different carjacking incident. Appellant indicated that he was involved, that the gun was a BB gun, and that he drove the vehicle. Humphries further testified that Lockhart was shown a photo spread, but he could not identify anyone. In addition, Humphries stated that appellant's fingerprints were located on the trunk of the vehicle.

In addition to the testimony of the officers who investigated the incidents, Charon Meadows, a juvenile probation officer, testified that she first met appellant in 2013 when he was thirteen or fourteen. She indicated that his eleven juvenile charges were all

misdemeanors, including theft of property, communicating false alarm, criminal mischief, and fleeing. Meadows testified that appellant had been adjudicated on four theft-of-property charges, and the rest were dismissed. Meadows stated that appellant was placed on conditions of release on some of the charges and then placed on indefinite probation in July 2015. Disposition of one case was still pending. Meadows testified that there was a revocation request due to appellant's school attendance, explaining that appellant had tardies that resulted in out-of-school suspensions and that he had been skipping school. Meadows stated that appellant would be eligible for Division of Youth Services (DYS) if his cases were transferred to the juvenile division but that there was no guarantee he would receive DHS.

Appellant called several witnesses after the State rested. Jacob Grummer, a school-based therapist with Living Hope Southwest, testified that he was based at Hall High School and was appellant's therapist from March 2015 until the summer of 2016. Grummer met appellant when appellant was in the 9th grade. He testified that he had a good relationship with appellant and that appellant had participated in the summer program for the past two summers. Grummer described appellant as a "tough guy" and a "very kind person" who would be the one to speak up for the class or for another student if the teacher was being unfair to the class or picking on a student. Grummer explained that because appellant had been missing class, he made a deal with appellant that if he went to all his classes, he would buy appellant a \$10 lunch. Appellant accomplished the challenge on the first try, and when Grummer brought the lunch, appellant shared it with the other students.

Grummer stated that appellant has a good relationship with his family and cares a lot about his mom, who has difficulties of her own and had spent time in the Department of

Correction; appellant did not have a relationship with his father. Grummer explained that when appellant's mom was incarcerated, appellant stayed with his grandmother and an aunt. Grummer thought that appellant was affected by his mom's incarceration, explaining that it was difficult for appellant to discuss, that he missed her, and that it caused them to struggle to pay bills and buy things. Grummer testified that appellant really wants to take care of his family and hates to see his family struggle when his mom was trying to work hard. Grummer thought appellant got into this trouble because he might have seen a quick way to make money to try to provide for his family—his younger sister was pregnant at the time and he saw his mom working hard and struggling to have enough money to provide for them. Grummer explained that appellant felt like he was acting as the man of the family at times and needed to provide for them.

Grummer testified that appellant is a very smart kid and has a lot of potential, explaining that he would be a productive citizen if he was given the right guidance and opportunity. Grummer added that if appellant was able to find a trade and make a decent living, he would definitely be a productive member of society.

Braelon Leniear, who was the head of security at Hall High School, testified that he had a good connection with all the students and spoke to appellant when he saw him. He described appellant as always respectful, smiling, and a well-behaved student. Leniear stated that appellant was pretty much on time but may have skipped class two or three times. Leniear thought appellant may have gotten into trouble when he succumbed to peer pressure and his environment, explaining that he became involved with the wrong crowd

and made some bad decisions. He stated that appellant had the potential to be a productive citizen and that he is smart enough to survive in the real world.

Scott Tanner, coordinator of the ombudsman division through the Public Defender Commission, explained the services available to a seventeen-year-old within the juvenile division. He also referenced extended juvenile jurisdiction (EJJ) because of the aggravated robbery charges.

Renee Miles, appellant's aunt, testified that appellant and his mom had lived with her on and off since appellant was five years old. She described herself as one of appellant's primary caregivers and told about many activities appellant had been involved in and awards he had received during elementary school. Miles thought appellant's recent trouble stemmed from "slight depression," explaining that it is depressing when you have things taken away from you. She explained that appellant's big brother in the Big Brothers Big Sisters program had moved away and that appellant's mom had moved from one place to another and had gone back to jail. Miles thought appellant could become a productive member of society if he was given another chance.

Latasha Ward, appellant's mother, testified about her incarcerations over the years. Ward explained that when she was in prison, appellant spent time with her mother or sister, Renee Miles. When Ward was released, she took her children back and tried to work full time to provide a home for them. Ward testified that appellant was never disrespectful to her and had always been a good child. She thought appellant got in trouble due to peer pressure. Ward testified that in order for appellant to become a better person and a productive member of society, he needed a program that would help him finish school and

learn a trade to be able to provide for himself. She did not think that being released into society without having any type of school structure or program would be helpful; she thought he needed something that would teach him to be a productive person.

In juvenile-transfer proceedings, the court shall order the case transferred to another division of circuit court only upon a finding by clear and convincing evidence that the case should be transferred. Ark. Code Ann. § 9-27-318(h)(2) (Repl. 2015). Clear and convincing evidence is proof that will produce in the trier of fact a firm conviction as to the allegation sought to be established. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

Pursuant to Arkansas Code Annotated section 9-27-318(g), the circuit court is required to consider all of the following factors at the transfer hearing:

- (1) The seriousness of the alleged offense and whether the protection of society requires prosecution in the criminal division of circuit court;
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- (3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;
- (4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;
- (5) The previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;
- (6) The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;
- (7) Whether there are facilities or programs available to the judge of the juvenile division of circuit court that are likely to rehabilitate the juvenile before the expiration of the juvenile's twenty-first birthday;
- (8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;
- (9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
- (10) Any other factors deemed relevant by the judge.

Ark. Code Ann. § 9-27-318(g) (Repl. 2015). The circuit court shall make written findings on all of the factors set forth above. Ark. Code Ann. § 9-27-318(h)(1). However, there is no requirement that proof be introduced against the juvenile on each factor, and the circuit court is not obligated to give equal weight to each of these factors in determining whether a case should be transferred. *Kiser v. State*, 2016 Ark. App. 198, 487 S.W.3d 374. On review, the circuit court's denial of a transfer is not reversed unless the decision is clearly erroneous. *Beulah v. State*, 344 Ark. 528, 42 S.W.3d 461 (2001). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that a mistake has been committed. *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004).

In this case, the circuit court made findings regarding each factor listed in section 9-27-318(g). The order denying the transfer provided as follows:

5. The seriousness of the alleged offenses and the protection of society justifies prosecution in the Adult Criminal Division of Circuit Court. Each of these offenses is very serious and involves firearms and the protection of society does require prosecution in an Adult Criminal Division.
6. The alleged offenses *were committed* in an aggressive, violent, premeditated or willful manner. The testimony was that the defendant was the aggressor in most of these cases and armed with a firearm.
7. The offenses were committed against persons and this takes greater weight than over property, even though there was no physical injury to any of the victims.
8. The culpability of the juvenile, including the level of planning and participation in the alleged offense was great. In most of these incidents, the defendant was identified as being the aggressor armed with a firearm and doing the talking. He was in on the planning and participated in each offense.
9. The previous history of the juvenile justifies prosecution in the Criminal Division of Circuit Court. The defendant had four previous theft of properties for which he

was adjudicated. He did not comply with his probation on these offenses and while still on probation he committed the alleged offenses in these cases.

10. The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated like an adult justifies prosecution in the Criminal Division of Circuit Court. The testimony and evidence presented show that the defendant is very smart, that he desired to commit adult crimes and that he desired to be the man in his family.

11. Facilities or programs available to the Judge of the Juvenile Division of Circuit Court are available but not likely to rehabilitate.

12. The juvenile was *part of a group* in the commission of the alleged offense but was the aggressor and ringleader.

13. There were no written reports or other materials relating to the juvenile's mental, physical, educational, and social history presented to the court.

14. There were no other additional relevant factors presented that are deemed relevant.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that based on a review of all the factors listed in Ark. Code Ann. 9-27-318 and the totality of the circumstances, clear and convincing evidence that the case should be transferred to the Juvenile Division of Circuit Court has not been presented. The Motion to Transfer to the Juvenile Division of Circuit Court will be denied.

(Emphasis supplied.) Appellant filed timely notices of appeal in all four cases.

On appeal, appellant argues only that the circuit court clearly erred in denying his motion to transfer because the testimony of Jacob Grummer, Braelon Leniear, and Latasha Ward "establishes that Appellant Ward had the potential to be rehabilitated had he been adjudicated a delinquent in the juvenile division of the circuit court." Appellant's argument is without merit.

Here, the circuit court heard the evidence, weighed it, reached its decision, and enumerated its conclusions in a written order. The circuit court properly considered the evidence on all of the factors, as required by the statute, and it was free to use its discretion

in the weight afforded to each factor. *Austin v. State*, 2017 Ark. App. 114, at 4–5, 515 S.W.3d 633, 636. The circuit court is not required to give equal weight to each of the statutory factors; it can rely on any of the factors so long as it considered and made written findings with regard to all the factors. *Id.* The circuit court did not ignore the testimony of these witnesses who thought that appellant had the potential to be rehabilitated; it simply weighed the evidence differently than appellant desired. See *Brown v. State*, 2016 Ark. App. 254, 492 S.W.3d 126. In addition, our supreme court has held that a juvenile may be tried as an adult solely because of the serious and violent nature of the offense. *C.B. v. State*, 2012 Ark. 220, 406 S.W.3d 796. Here, each of appellant’s four cases included a charge of aggravated robbery. Aggravated robbery is a serious and violent offense. See *Rhodes v. State*, 332 Ark. 516, 519, 967 S.W.2d 550, 551 (1998).

After reviewing the evidence, we are not left with a firm and definite conviction that the circuit court made a mistake in denying appellant’s motions to transfer the cases to juvenile court. Accordingly, we affirm.

Affirmed.

HARRISON and VAUGHT, JJ., agree.

William R. Simpson, Jr., Public Defender, by: *Clint Miller*, Deputy Public Defender, for appellant.

Leslie Rutledge, Att’y Gen., by: *Jacob H. Jones*, Ass’t Att’y Gen., for appellee.