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**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CR-21-335

KAELON PRESLEY		Opinion Delivered June 1, 2022
	APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FIFTH DIVISION [NO. 60CR-20-490]
V.		
STATE OF ARKANSAS	APPELLEE	AFFIRMED

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**N. MARK KLAPPENBACH, Judge**

Kaelon Presley appeals from the order of the Pulaski County Circuit Court denying his motion to transfer his criminal charges to juvenile court. He argues that the court’s findings were clearly erroneous. We affirm.

Presley was charged with capital murder in the death of his mother, Shondra Miller. He was also charged with tampering with physical evidence. Presley was sixteen years old when Miller was killed on December 14, 2019. After being charged as an adult in circuit court, Presley filed a motion to transfer to juvenile court as an extended juvenile jurisdiction designation. A transfer hearing was held on February 4, 2021.

At the transfer hearing, Donshurae Coleman testified that she had been around Presley a lot since he was nine or ten years old. She said that he is a “good kid” who makes

As and Bs in school, and she never knew him to get in trouble. Coleman testified that she would welcome Presley into her home if he was released.

Dr. Benjamin Silber was retained by Presley's attorney to evaluate Presley's amenability to rehabilitation in the juvenile system. Dr. Silber is a psychologist employed at the Arkansas State Hospital as well as in private practice. Dr. Silber met with Presley for close to four hours, and he ultimately concluded that Presley is amenable to rehabilitation. Dr. Silber discussed risk factors, which are things that make a person more likely to offend, and protective factors, which are things that make a person less likely to offend. He described how Presley had demonstrated amenability to treatment when considering the following factors: community involvement, future aspirations, deference to authority, personality, motivation for change, behavior while incarcerated, ability to learn and be educated, and intelligence. Presley had been involved in a number of organizations in the community where he had established positive relationships with people in authority and other adults; he had taken advanced-placement classes in high school and planned to go to college; his personality was cooperative and indicated an ability to effectively form a therapeutic alliance; and he had been able to control his behavior while incarcerated.

Dr. Silber also conducted a SAVRY assessment, which stands for the Structured Assessment of Violence Risk in Youth and is used to evaluate whether a juvenile might be at risk in the future or could be amenable to treatment. Dr. Silber said that Presley demonstrated all six of the SAVRY protective factors. Of the twenty-six risk factors for recidivism, Dr. Silber found support for only two or three. These included exposure to

violence in the home and childhood history of maltreatment. Presley reported that he had observed his mother be assaulted by former partners and that he had been abused himself by one of her partners.

On cross-examination, Dr. Silber acknowledged that a juvenile could still be a risk even though only two or three risk factors from the assessment applied. He also acknowledged that Presley's community involvement and strong relationships were already in place when this crime occurred. When questioned about what specific treatment or counseling needs Presley had, Dr. Silber stated that "other than general guidance and support, there wasn't a lot of things in particular that I think I would recommend."

The defense's last witness was Brooke Digby, who is employed by the Arkansas Public Defender Commission as the juvenile ombudsman for the State. She listed treatment and rehabilitation services available to juveniles in the custody of the Division of Youth Services (DYS), including individual therapy, group therapy, and family therapy; psychiatric and psychological assessments; behavior-intervention programs and trauma-focused cognitive-behavioral therapy; educational evaluations and vocational-training opportunities; and discharge planning, case-monitoring intervention, and transitional-setting placement and assistance. She described how individualized treatment goals are made for the juveniles and how, contrary to adult prison, attending therapy and school was mandatory. Digby had spoken with Presley on the phone, and she believed there were services available that would be beneficial to him. She noted that he had no history in the juvenile system. Digby testified that either through extended juvenile jurisdiction or a blended sentence, a juvenile can be

given an opportunity to determine if rehabilitation is possible, and if it is not, the court has the option to impose an adult prison sentence.

The State presented the testimony of Detective Matt Harrelson of the Little Rock Police Department. On the morning of December 14, 2019, two 911 calls were placed regarding Miller's death, but neither were from Presley. Police found Miller deceased inside her home with a head injury. Presley told responding officers that his dog had gotten away, and while he was out looking for the dog, someone had entered the home and shot his mother. A neighbor told police that Presley told him that his mother had killed herself. Miller's girlfriend, Breanna Barnes, told police that she had left the home early that morning for work and had later attempted to call Miller but could not reach her. Barnes then contacted Presley, who told her that someone had come into the home and shot his mother while he was out chasing the dog. Surveillance video from the home disproved Presley's account and instead showed him walking outside, throwing an item, and returning inside.

Detective Harrelson testified that when Presley was interviewed, he said that his mother had said something that made him angry. Presley said that he then retrieved the gun, which belonged to a friend, and shot his mother while she was sitting on the couch using her phone. Presley initially claimed that he had been physically and verbally abused by his mother, but he later told Dr. Silber that those claims were not true. When asked what his mother said to make him mad, Presley stated that he did not remember but it made him "very, very mad," so he grabbed the gun, pointed it at her, was "wiggling it around and [he] squeezed the trigger and [he] shot her." On cross-examination, Detective Harrelson testified

that Presley had also indicated that he did not intend to kill his mother, that it was an accident, and that he was panicked after the shooting. Harrelson said that Presley became emotional during the interview and said that he wished he could go back and change what happened. The circuit court denied Presley's motion to transfer.

Under Arkansas law, a prosecuting attorney has discretion to charge a juvenile sixteen years of age or older in the criminal division of the circuit court if the juvenile has engaged in conduct that, if committed by an adult, would be a felony. Ark. Code Ann. § 9-27-318(c)(1) (Repl. 2020). On the motion of the court or any party, the court in which the criminal charges have been filed shall conduct a hearing to determine whether to transfer the case to another division of circuit court having jurisdiction. Ark. Code Ann. § 9-27-318(e). The moving party bears the burden of proving that the case should be transferred to the juvenile division of circuit court. *Walton v. State*, 2020 Ark. App. 318, 602 S.W.3d 754. The circuit 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). Clear and convincing evidence is that degree of proof that will produce in the trier of fact a firm conviction as to the allegation sought to be established. *Walton, supra*. We will not reverse a circuit court's determination of whether to transfer a case unless the decision is clearly erroneous. *Id.* 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. *Id.*

At a juvenile-transfer hearing, the circuit court is required to consider all the factors set forth in Arkansas Code Annotated section 9-27-318(g). Pursuant to Arkansas Code Annotated section 9-27-318(h)(1), the circuit court shall make written findings on all the factors. 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. *Walton, supra.*

The circuit court's order contained written findings on all the factors as follows:

- (1) The seriousness of the alleged offense and whether the protection of society requires prosecution in the criminal division of circuit court are clearly established. Presley is charged with A.C.A. § 5-10-101 Capital Murder (Y/F) in connection with the death of Shondra Miller, and A.C.A. § 5-53-111 Tampering with Physical Evidence (D/F).
- (2) The alleged offenses were committed in a violent, aggressive, premeditated or willful manner. The testimony established that Presley fired the weapon prior to the offense, that he knew the weapon operated/functioned properly, and that he shot Miller (his mother) in the head as she sat on her couch looking at her phone.
- (3) The alleged offenses were committed against a person (Shondra Miller).
- (4) The culpability of Presley is confirmed by the testimony of Detective Harrelson, testimony of Dr. Silber, and notes in the report of Dr. Silber. Evidence presented shows that Presley, acting alone, weighed the decisions and engaged in the following actions alleged in the homicide: firing the murder weapon a few days before the homicide, becoming angry at his mother, going to his room, retrieving a firearm from his room, returning to the room where his mother was seated, pointing the firearm at her, and squeezing the trigger which caused the firearm to discharge a round that struck his mother in the head.
- (5) Presley has not been charged or adjudicated delinquent in any juvenile matters and has no prior criminal history.
- (6) Presley was mature and sophisticated at the time of the offense. Presley attended Parkview Magnet High School, was by all accounts an honor student, took

advanced placement courses, and was active in his community. As noted in Dr. Silber's report, Presley was involved in many community programs and mentored others in his sphere of influence. He was able to build and maintain healthy/stable relationships with others and presented deference to authority. Proof of Presley's maturity and community involvement was also established by the testimony of Donshurae Coleman (his uncle's fiancée). Detective Harrelson testified that Presley falsified the events surrounding the homicide, attempted to evade discovery of his involvement by falsifying his activities when the homicide occurred, and tampered with evidence by disposal of the firearm used in the homicide.

- (7) The evidence is not clear and convincing that Presley is likely to be rehabilitated by any facility or program offered by the juvenile division. Juvenile Ombudsman Brooke Digby testified about the rehabilitation programs that are available, generally, to any juvenile that is in the Division of Youth Services. Nevertheless, the Court finds no facts indicating that Presley needs such services, let alone that he is likely to benefit from them. Although testimony was presented that Presley's behavior in the alleged commission of his mother's death is an "isolated incident," there is no proof showing a pattern of impulsivity, or that Presley has a medical or mental condition that requires treatment. Dr. Silber's psychological assessment of Presley found that issues of anger management and impulsivity control *were not* risk factors. In his testimony, Dr. Silber pointed to Presley's significant community involvement, healthy and stable relationships with others, deference to authority, intelligence, willingness and ability to learn, ability to control his behavior, inhibiting aggression and violence (even when it was prompted) as reasons that Presley is amenable to rehabilitation. However, that testimony confirms that Presley is smart, sophisticated, and personable. Moreover, although Dr. Silber's testimony shows that Presley had significant and obvious motivation to lie during his evaluation, Dr. Silber did not perform a PCL-R (Psychopathy Checklist-Revised) Assessment or a personality inventory to assess malingering or psychopathy. The Court is unable to find that Presley has any condition that, objectively, is amenable to rehabilitation. Absent such objective proof, the Court cannot find that the clear and convincing standard for a juvenile transfer on this issue has been met.
- (8) Presley was the sole criminal actor.
- (9) The written reports and other material submitted related to Presley's mental, physical, educational, and social history show that he received good grades at a science magnet high school. He earned high grades in advanced placement

courses. He mentored others and participated in community programs designed to uplift the community. Presley does not appear to suffer from any deficits.

Presley argues that the circuit court clearly erred in failing to give sufficient weight to the testimony given by his witnesses. He argues that Digby's testimony established that there were DYS services that could be beneficial to him, and Dr. Silber concluded that he was amenable to rehabilitation. Presley argues that the State failed to introduce evidence contradicting their testimony, and thus, the circuit court erred in finding that he had failed to show that he was likely to be rehabilitated in the juvenile system.

As reflected in the circuit court's findings, the court did specifically consider the testimony of Presley's witnesses, but it did not find that there were programs likely to rehabilitate Presley. Instead, the court found that the evidence, including the many factors that would make Presley amenable to rehabilitation according to Dr. Silber, indicated that Presley was not suffering from any behavioral deficits or personality disorder that may have contributed to his commission of the charged offenses. Because Presley already possessed the attributes of a person less likely to offend at the time of Miller's murder, the court could not conclude that Presley was in need of services available in the juvenile court system and that these services were likely to rehabilitate him. As in *Drexler v. State*, 2018 Ark. App. 95, 538 S.W.3d 888, the witnesses were unable to state which services would be likely to rehabilitate Presley. We cannot say that the circuit court's finding was clearly erroneous. Moreover, whether there were programs available likely to rehabilitate Presley was but one factor for the court to consider. The circuit court is not obligated to give equal weight to



each of the factors in determining whether a case should be transferred. *Walton, supra*. As the State notes, the supreme court has held that “the serious and violent nature of a capital murder charge . . . is sufficient to uphold the denial of a motion to transfer to juvenile court.” *Drexler*, 2018 Ark. App. 95, at 5, 538 S.W.3d at 891 (quoting *Carroll v. State*, 326 Ark. 882, 885, 934 S.W.2d 523, 525 (1996)).

Here, as required, the court considered each factor in Arkansas Code Annotated section 9-27-318(g), made findings on each factor, and its findings were supported by the evidence. The circuit 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). We cannot say that the circuit court clearly erred in failing to find clear and convincing evidence that the case should be transferred. Accordingly, we affirm the denial of Presley’s motion.

Affirmed.

ABRAMSON and BROWN, JJ., agree.

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

*Leslie Rutledge*, Att’y Gen., by: *Clayton P. Orr*, Ass’t Att’y Gen., for appellee.