Michael Thomas HAMILTON *v.* STATE of Arkansas

CR 94-603 896 S.W.2d 877

Supreme Court of Arkansas
Opinion delivered May 1, 1995

1. CRIMINAL LAW — NEW RULE FOR APPEALING RULINGS ON JUVENILE TRANSFERS IS ADOPTED PROSPECTIVELY. — Since, prior to the passage of Act 273 of 1989, codified at Ark. Code Ann. § 9-27-318(h), direct appeals were the preferred method of review; permissive interlocutory appeals were made practicable only by the passage of the act; and cases have gone both ways since that date, it would be unconscionable to deny appellant's right to appeal; the new rule regrading appeal of transfer orders was adopted prospectively.
2. CRIMINAL PROCEDURE — JUVENILE TRANSFER RULINGS — NEW RULE FOR APPEALS. — For criminal prosecutions commenced after the finality of this opinion, an appeal from an order granting or denying transfer of a case from one court to another having jurisdiction over juvenile matters must be considered by way of interlocutory appeal, and an appeal from such an order after a judgment of conviction in circuit court is untimely and will not be considered.
3. APPEAL & ERROR — STANDARD OF REVIEW OF DENIAL OF JUVENILE TRANSFERS. — In examining a denial of a juvenile's motion to transfer, the standard of review is whether the circuit court's denial of the motion was clearly erroneous.
4. CRIMINAL PROCEDURE — JUVENILE TRANSFER — MERITS OF HEARSAY ARGUMENT NOT REACHED — NO EVIDENCE DECISION BASED ON HEARSAY. — Where there was no indication that the trial court's findings were based on anything other than the information filed with the trial court, the appellate court did not reach the merits of appellant's argument that the trial court erred in allowing hearsay evidence at the transfer hearing.
5. CRIMINAL PROCEDURE — DENIAL OF JUVENILE TRANSFER SUPPORTED BY INFORMATION. — Where the circuit court denied the motion to transfer, referring to the criminal information, which alleged that appellant committed first-degree murder by "unlawfully, feloniously, and with the purpose of causing the death of another person, did cause the death of [the victim]," the charge alone was clear and convincing evidence to support the circuit court's denial of the motion to transfer; the serious and violent nature of an offense is a sufficient basis for denying a motion to transfer a juvenile's case to juvenile court, a criminal information, on its own, is sufficient to establish that the offense charged is of a serious and violent nature.

Appeal from Pulaski Circuit Court, First Division; *Marion Humphrey*, Judge; affirmed.

William R. Simpson, Jr., Public Defender, *Mac Carder, Jr.*, Deputy Public Defender, by: *C. Joseph Cordi, Jr.*, Deputy Public Defender, for appellant.

Winston Bryant, Att'y Gen., by: *Vada Berger*, Asst. Att'y Gen., for appellee.

JACK HOLT, JR., Chief Justice. Appellant Michael Thomas Hamilton, a juvenile, was charged with first-degree murder in circuit court, convicted of manslaughter, and sentenced to a ten-year term of imprisonment. This case was transferred to us from the court of appeals under Ark. Sup. Ct. R. 1-2(a)(3). Hamilton argues on appeal that the circuit court erred in allowing hearsay testimony at a hearing on his motion to transfer his case to juvenile court. Inasmuch as the circuit court's findings were not premised on hearsay testimony, but, rather, upon the information filed against Hamilton, we affirm.

Facts

The appellant, Michael Thomas Hamilton, was charged by felony information on December 7, 1992, with first-degree murder in connection with the shooting death of eleven-year-old Shadrick Flemons at his home at 8 Winnie Cove in Jacksonville. Hamilton, who was fourteen on the date of the alleged offense, November 4, 1992, was charged as an adult in circuit court. On February 5, 1993, Hamilton filed a motion to transfer his case to juvenile court.

A hearing was held on the motion in circuit court on February 19, 1993, at which Detective Steven Ingram of the Jacksonville Police Department testified that he arrived at the scene of the shooting and interviewed three witnesses — Jeremy Wells, David Back and Matthew Duggie. Over Hamilton's hearsay objection, Detective Ingram testified that the three young witnesses told him that they were playing "war games" amongst some trees in the front yard of 8 Winnie Cove when they observed Hamilton and the victim, who had a toy gun, arguing. According to Detective Ingram, two of the three boys told him that they watched Hamilton go into the house and retrieve a rifle off a gun rack. It was Detective Ingram's testimony that one of the witnesses told

him that Hamilton cocked the rifle back "like maybe he was loading it," picked up a small box, put it down, then went outside to the front door and pointed the weapon at the victim. Apart from his testimony giving rise to the hearsay objection, Detective Ingram testified without objection that the eleven-year-old victim "had been shot in the head almost between the eyes." Detective Ingram further testified, also without objection, that the preliminary autopsy report indicated that the shot which killed the victim was fired from close range. The circuit court also heard testimony from Hamilton and Reverend Marvin Thomas in support of Hamilton's motion to transfer before denying the motion "based upon the level of violence that is alleged here."

Hamilton's case was tried in circuit court before a jury on October 13, 1993. The jury returned a guilty verdict for manslaughter, and the circuit court sentenced Hamilton to a ten-year term of imprisonment. In claiming as his sole point of error that "the circuit court erred by allowing the state to introduce hearsay testimony during the hearing on the appellant's motion to transfer to juvenile court," Hamilton, in reality, asserts that the trial court, in refusing to transfer his case to juvenile court, erroneously predicated its findings to retain jurisdiction on hearsay evidence.

Appealable order

The State asserts that this appeal should be dismissed as untimely since Hamilton failed to appeal the circuit court's February 19, 1993, ruling denying transfer of his case to juvenile court. In making this assertion, the State asks us to adopt the rationale of *State* v. *Harwood*, 98 Idaho 793, 572 P.2d 1228 (1977), in which the Idaho Supreme Court held that a juvenile cannot challenge a trial court's denial of a motion to transfer on direct appeal. We agree with the State's argument, and find persuasive the following language in *Harwood:*

> To allow a defendant who has been convicted in the superior court to question on appeal the propriety of the juvenile court's finding would afford him an opportunity to secure a reversal of a judgment of conviction even though he was found guilty after an errorless trial. Such a defendant should not be allowed to silently speculate on a favorable verdict and then after an adverse judgment is entered

> proclaim that the juvenile court's finding was erroneous. Moreover, it is in the accused's best interest to seek immediate relief from an improper finding in the juvenile court so he may be spared the burden and public scrutiny associated with a criminal trial. Additionally, the delay inherent in criminal prosecutions may substantially prejudice a juvenile court reconsideration of its prior finding of unfitness should the cause be remanded after a review of criminal proceedings.

572 P.2d at 1229, *quoting People* v. *Chi Ko Wong*, 18 Cal.3d 698, 135 Cal. Rptr. 392, 557 P.2d 976 (1976).

[1] In short, we adopt the reasoning of *Harwood* by holding that a juvenile cannot challenge transfer orders on direct appeal from a judgment or conviction of the circuit court. In doing so, we must determine whether, pursuant to the status of our current law, our holding should be prospective.

Prior to 1989, it was commonplace for the challenge of transfer orders from juvenile court to circuit court or from circuit court to juvenile court to be raised on appeal. This practice continued until the General Assembly passed Act 273 of 1989, which repealed the Juvenile Code of 1975. This enactment, codified as Ark. Code Ann. § 9-27-318(h) (Repl. 1993) provides in pertinent part that:

> Any party may appeal from an order granting or denying the transfer of a case from one court to another court having jurisdiction over the matter.

Since the passage of Act 273, we have considered a number of cases involving transfer by way of interlocutory appeal. *See Davis* v. *State*, 319 Ark. 613, 893 S.W.2d 678 (1995); *Sebastian* v. *State*, 318 Ark. 494, 885 S.W.2d 882 (1994); *Beck* v. *State*, 317 Ark. 154, 876 S.W.2d 561 (1994); *Walter* v. *State*, 317 Ark. 274, 878 S.W.2d 374 (1994); *Bell* v. *State*, 317 Ark. 289, 877 S.W.2d 579 (1994); *Johnson* v. *State*, 317 Ark. 521, 878 S.W.2d 758 (1994); *Whitehead* v. *State*, 316 Ark. 563, 873 S.W.2d 800 (1994); *Oliver* v. *State*, 312 Ark. 466, 851 S.W.2d 415 (1993); *Holland* v. *State*, 311 Ark. 494, 844 S.W.2d 943 (1993); *Wicker* v. *State*, 310 Ark. 580, 839 S.W.2d 186 (1992); *Walker* v. *State*, 304 Ark. 393, 803 S.W.2d 502, *supplemental opinion on denial of rehearing*, 304

Ark. 402-A, 805 S.W.2d 80 (1991); *Slay* v. *State*, 309 Ark. 507, 832 S.W.2d 217 (1992); *Cobbins* v. *State*, 306 Ark. 447, 816 S.W.2d 161 (1991); *Bradley* v. *State*, 306 Ark. 621, 816 S.W.2d 605 (1991). However, we have also described appeals from denials of transfer motions as "although . . . interlocutory in nature, they are appealable by statute." *Webb* v. *State*, 318 Ark. 581, 886 S.W.2d 618 (1994), *citing State* v. *Hatton*, 315 Ark. 583, 868 S.W.2d 492 (1994). While we have not specifically held that denials of transfer motions are appealable after a judgment of conviction, we have addressed this issue in at least two cases on direct appeal following a conviction in circuit court. *See Tucker* v. *State*, 313 Ark. 624, 855 S.W.2d 948 (1993); *Johnson* v. *State*, 307 Ark. 525, 823 S.W.2d 440 (1992). *See also Porter* v. *State*, 43 Ark. App. 110, 861 S.W.2d 122 (1993).

[2] In reviewing our cases and legislation dealing with the issue of denials of transfer, it is obvious that, prior to the passage of Act 273 of 1989, codified at Ark. Code Ann. § 9-27-318(h), direct appeals were the preferred method of review; permissive interlocutory appeals were made practicable only by the passage of this act. Our cases since that date have seemed to go both ways, thus it would be unconscionable at this time to deny or foreclose Hamilton's right to appeal. For this reason, we adopt a prospective rule regarding the appeal of transfer orders pursuant to Ark. Code Ann. § 9-27-318(h), and hold that for criminal prosecutions commenced after the finality of this opinion, an appeal from an order granting or denying transfer of a case from one court to another having jurisdiction over juvenile matters must be considered by way of interlocutory appeal, and an appeal from such an order after a judgment of conviction in circuit court is untimely and will not be considered.

Denial of transfer

[3–5] In examining the denial of Hamilton's motion to transfer, the standard of review in such juvenile-transfer cases is whether the circuit court's denial of the motion was clearly erroneous. *Davis* v. *State, supra; Bell* v. *State, supra; Beck* v. *State, supra; Vickers* v. *State*, 307 Ark. 298, 819 S.W.2d 13 (1991). However, we do not reach the merits of Hamilton's hearsay argument, as there is no indication that the trial court's findings were based on anything other than the information filed with the trial

court. The circuit court denied the motion to transfer, obviously referring to the criminal information. We have said that the serious and violent nature of an offense is a sufficient basis for denying a motion to transfer and trying a juvenile as an adult, and that a criminal information, on its own, is sufficient to establish that the offense charged is of a serious and violent nature. *Id.; See also Walker* v. *State, supra.* Here, the information alleged that Hamilton committed first-degree murder by "unlawfully, feloniously, and with the purpose of causing the death of another person, did cause the death of Shadrick Flemons." In short, the charge by way of the criminal information alone was clear and convincing evidence which supported the circuit court's denial of the motion to transfer; accordingly, we cannot say that its ruling was clearly erroneous.

Affirmed.

NEWBERN and ROAF, JJ., dissent.

DAVID NEWBERN, Justice, dissenting. Justice Roaf's dissenting opinion expresses my views on this case, and I join in that opinion. I wish to add only that the majority has now given us a prime example of the error we made in *Walker* v. *State*, 304 Ark. 393, 803 S.W.2d 502 (1991). There we placed the burden of proof on the juvenile rather than the State with respect to whether the juvenile should be tried as an adult. That has allowed us to permit the trial courts, time and again, to sanction adult trials for children solely on the basis of a charge of a violent crime.

No doubt some people below the age of 18 are tough, hardened, and incorrigible. In my view, the transfer provisions should be interpreted so that such persons wind up being treated as adults. The State, however, in a case such as this one, should be required to show more than that a youngster who was aged 14 has been charged with committing one act of violence.

I respectfully dissent.

ROAF, J., joins in this dissent.

ANDREE LAYTON ROAF, Justice, dissenting. I cannot argue with the rationale employed by the majority in holding that henceforth, juvenile transfer orders may not be appealed after a judgment of conviction in circuit court. However, the state will not

be appealing from circuit court convictions after a transfer or refusal to transfer, as the case may be; this holding will only affect juveniles, and I must dissent.

Of course a juvenile can be "found guilty after an errorless trial," even when he should not have been tried in circuit court in the first place. The question for me is how he got to circuit court, not what happened afterward. In light of this court's previous holdings in *Ring* v. *State*, 320 Ark. 128, 894 S.W.2d 944 (1995), and *Boyd* v. *State*, 313 Ark. 171, 853 S.W.2d 263 (1993), it seems to be open season on juveniles, at least in the context of juvenile transfer hearings. Indeed, the state in the instant case now seriously argues that the rules of evidence should not apply in such hearings. The majority wisely does not reach this issue in this sad case involving young playmates playing without adult supervision and with access to unsecured guns and ammunition. Undoubtedly, it is an issue that we will confront again.

I respectfully dissent.

NEWBERN, J., joins the dissent.

Robert Neal HELTON, Jr. *v.* STATE of Arkansas

CR 94-1363 896 S.W.2d 887

Supreme Court of Arkansas
Opinion delivered May 1, 1995

1. MOTIONS — DIRECTED VERDICT MOTION NOT SUFFICIENTLY SPECIFIC. — With a motion for directed verdict based on the "lack of significant evidence . . . that he's guilty of rape" and a later renewal of the motion for directed verdict "on the grounds previously stated," appellant failed to provide a specific basis for his directed verdict motion, and the trial court did not err in denying it; the sufficiency issue was waived and not considered on appeal.
2. APPEAL & ERROR — ISSUE MOOT — NO PREJUDICE TO APPELLANT. — Appellant was not prejudiced by the trial court's denial of his motion to deny the State the advantage of a rebuttal argument in

the sentencing phase where the State elected not to present a rebuttal argument; the issue was moot on appeal.

Appeal from Saline Circuit Court; *John W. Cole*, Judge; affirmed.

Joe Kelly Hardin, for appellant.

Winston Bryant, Att'y Gen., by: *Sandy Moll*, Asst. Att'y Gen., for appellee.

JACK HOLT, JR., Chief Justice. In this appeal from his conviction for rape, the appellant, Robert Neal Helton, Jr., raises two points for reversal. He contends that the trial court erred in (1) not granting a directed verdict because the State failed to produce sufficient evidence that would support a rape conviction; and (2) allowing the State, over the defense's objection, to have rebuttal during the sentencing phase of the trial. Neither point has any merit whatsoever, and we affirm the judgment of the trial court.

Facts

The record reveals that, on March 30, 1994, at about 1:00 a.m., appellant Robert Neal Helton, Jr., went to a neighboring house trailer where the victim was living and asked her to drive him in his Ford Bronco to a used car lot, saying that he was intoxicated and didn't want to be stopped by the police. After driving some distance, Helton directed the victim to turn down a dirt road.

When the vehicle stopped, Helton got out and urinated. Then he walked around to the driver's side, opened the door, seized the victim by the neck, and pressed something that she believed to be a knife to her side. The victim screamed, and Helton said, "Shut up. I'll kill you if you scream again."

Helton then ordered the victim to pull her pants down and to take her panties off. When she complied, he grabbed her hands and performed oral sex on her, warning her afterward that "You're not going to tell anybody about this. I'll kill you if you say anything about this." Next, Helton ordered the victim into the back seat of the vehicle, where he engaged in sexual intercourse with her and repeated his threat to kill her if she told anyone about the rape.

Subsequently, Helton and the victim returned to the trailer park, and the victim gave an account of the rape to the couple with whom she lived. Later in the day, she informed her boyfriend, who took her to the University of Arkansas for Medical Sciences in Little Rock for an examination. The crime was also reported to the Saline County Sheriff's Office, which began an investigation. Helton was charged by information on April 11, 1994, with the Class Y felony of rape, pursuant to Ark. Code Ann. § 5-14-103 (Repl. 1993), and with being an habitual offender.

A jury trial was conducted in the Saline County Circuit Court on September 2, 1994. Testifying on behalf of Helton, his fiancee, Deborah Melson, stated that the accused had spent the entire night in question sleeping in her room in the house she shared with her parents, her children, and her brother. Ms. Melson's mother, Mary Melson, also testified that Helton spent the night of the crime at her house. A guilty verdict was returned, and a life sentence was imposed. From that judgment, this appeal arises.

I. Directed verdict

Helton argues in his first point for reversal that the trial court erred in denying his motion for a directed verdict because the evidence was insufficient to support a rape conviction. Neither motion, however, was made with the requisite degree of specificity to preserve this issue for appeal.

At the close of the State's case, defense counsel made the following motion:

> MR. HARDIN: Make a motion at this time for a directed verdict on the charge of rape in that there's not been significant evidence which would lead to a conclusion by the jury that he's guilty of rape.

The court denied the motion. Subsequently, at the close of all the evidence, the defense made the following statement:

> MR. HARDIN: The defense renews its motion for a directed verdict on the grounds previously stated.

The court denied the attempted renewal.

In *Walker* v. *State*, 318 Ark. 107, 109, 883 S.W.2d 831, 832 (1994), this court declared that

> We draw a bright line and hold that a motion for a directed verdict in a criminal case must state the specific ground of the motion. Rule 36.21 of the Arkansas Rules of Criminal Procedure is to be read in alignment with Rule 50 of the Arkansas Rules of Civil Procedure. If a motion for directed verdict is general and does not specify a basis for the motion, it will be insufficient to preserve a specific argument for appellate review.

The holding was reiterated in *Daffron* v. *State*, 318 Ark. 182, 885 S.W.2d 3 (1994), a rape case, where we held that a motion for acquittal "based on the insufficiency of the evidence on the State's case" and a later renewal of "previous motions" constituted a waiver of the right to challenge the sufficiency of the evidence. The moving party must apprise the trial court of the specific basis on which a motion for a directed verdict is made. *Id.*

[1] Because Helton failed to provide a specific basis for his directed verdict motion, the trial court did not err in denying it. The sufficiency issue having been waived, we need not consider it on the merits. *Andrews* v. *State*, 305 Ark. 262, 807 S.W.2d 917 (1991).

II. Rebuttal in sentencing phase

For his second point for reversal, Helton contends that the trial court erred in permitting the State to have rebuttal in the sentencing phase. While the jury was deliberating the question of guilt, the following exchange occurred between defense counsel and the trial court:

> MR. HARDIN: If there is a second stage, the defendant will object to the prosecution getting the advantage of a rebuttal argument in the second stage since there is not a burden of proof of beyond a reasonable doubt connected with that stage. It is just a matter of sentencing for the jury and the jury finding, based on the aggravating and mitigating circumstances presented by both sides. Therefore the defense will object to the prosecution getting the added closing advantage.
>
> THE COURT: And the court denies that motion, finding there is always a burden of proof on the moving party. In this case, the State, insofar as the evidence it presents,

is the moving party and does have the burden of convincing the jury of the truth of those allegations at least by a preponderance of the evidence, and the State will therefore have an opening and a rebuttal in its closing argument.

[2] During the sentencing phase, the State elected not to present a rebuttal argument. Consequently, Helton suffered no prejudice and therefore has no basis for reversal with respect to this point. The issue is moot.

III. Rule 4-3(h)

As this was a case in which the appellant was sentenced to life imprisonment, the record has been thoroughly examined. There are no points preserved for appeal that appear to constitute prejudicial error.

Affirmed.