

# Kuntrell Jackson v State of Arkansas

ARKANSAS COURT OF APPEALS

NOT DESIGNATED FOR PUBLICATION

ROBERT J. GLADWIN, JUDGE

DIVISION II

KUNTRELL JACKSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

CA 02-535

January 29, 2003

APPEAL FROM THE MISSISSIPPI COUNTY CIRCUIT COURT

[NO. CR-2001-106(B)]

HON. DAVID BURNETT, JUDGE

AFFIRMED

Kuntrell Jackson was charged in the criminal division of circuit court with capital murder. Appellant was fourteen years old at the time the offense was allegedly committed. This is an interlocutory appeal from an order denying appellant's motion to transfer his case to juvenile court.

On November 18, 1999, Laurie Troup was working at Movie Magic, a video store in Blytheville, when appellant and two other juveniles entered the store and demanded that she give them money. When Troup refused to hand over the money, she was shot in the face with a sawed-off shotgun. The juveniles fled without taking any money.

The juveniles were apprehended in March 2001, and all three gave incriminating statements to police. According to their statements, which were introduced at the transfer hearing, appellant and his cohorts planned to rob the video store because they wanted money. Appellant contended that one of his accomplices supplied the weapon and fired the fatal shot and that he was the lookout.

In addition to the juveniles' statements to police, the circuit judge was also presented with appellant's juvenile arrest history at the transfer hearing. In February 2000, appellant was adjudicated delinquent for shoplifting, stealing two cars, and attempting to steal a third car. While on probation less than a month later, appellant was arrested for committing two counts of auto theft. In October 2000, appellant was adjudicated delinquent for theft by receiving a vehicle, criminal trespass, and fleeing. He was committed to the Division of Youth Services as a serious offender.

The results of a forensic psychiatric evaluation were also considered by the circuit judge. The psychologist found that appellant appeared to understand the charges against him and found no psychiatric impairment that would have caused him to be unable to conform his behavior to the requirements of the law at the time of the offense.

At the transfer hearing, Jack Wallace, a juvenile intake officer, testified that there was no rehabilitation program available in the juvenile system at that time in the event appellant was found guilty of capital murder.

In determining whether to retain jurisdiction or to transfer the case, the circuit judge must consider the following factors pursuant to Ark. Code Ann. § 9-27-318(g) (Repl. 2002):

- (1) The seriousness of the alleged offense and whether the protection of society requires prosecution as an extended juvenile jurisdiction offender or 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 which are likely to rehabilitate the juvenile prior to the expiration of the juvenile division of circuit court's jurisdiction;
- (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.

In its order denying appellant's motion to transfer, the circuit court relied on the first nine factors. At the hearing, the circuit judge noted the seriousness of the offense and gave due consideration to the fact that the offense involved a firearm, was for pecuniary gain, and endangered the life of another. The circuit court's decision on whether to transfer the case to juvenile court will not be reversed unless the decision is clearly erroneous. *Witherspoon v. State*, 74 Ark. App. 151, 46 S.W.3d 549 (2001).

Appellant argues on appeal to this court that society would be better served if he were prosecuted in the juvenile division of the circuit court with extended juvenile jurisdiction where he could possibly be rehabilitated rather than transferring his case to the criminal division where he will be tried as an adult and could face life without parole. Appellant maintains that he was only seventeen days beyond his fourteenth birthday at the time of the alleged offense and lacks maturity that could be gained with time and rehabilitative services. He points out that his arrest history consisted of property crimes and was not indicative of a propensity for crimes against persons. Finally, appellant argues that he was not the leader of the group.

Arkansas Code Annotated section 9-27-318(c)(2)(A) provides that the criminal division of circuit court and the juvenile division of circuit court have concurrent jurisdiction, and a prosecuting attorney may charge a juvenile in either division when a case involves a juvenile fourteen or fifteen years old when he engages in conduct that, if committed by an adult, would be capital murder. Upon a finding by the criminal division of circuit court that a juvenile age fourteen or fifteen and charged with crimes in subdivision (c)(2) of this section should be transferred to the juvenile division of circuit court, the judge shall enter an order to transfer as an extended juvenile jurisdiction case. Ark. Code Ann. § 9-27-318(i). Therefore, the case cannot become an extended juvenile jurisdiction case unless it is transferred to the juvenile division of circuit court. The trial court must find by clear and convincing evidence that the juvenile should be tried as an adult. Ark. Code Ann. § 9-27-318(h).

There is nothing in the record that would suggest that the circuit judge failed to consider all of the relevant factors in section 9-27-318(g). The circuit court is not required to enumerate all ten factors in its written findings. See *Beulah v. State*, 344 Ark. 528, 42 S.W. 3d 461 (2001). The circuit court's failure to specifically mention certain evidence presented by the appellant in its order does not mean that the court ignored the evidence or failed to consider it. *Id.* We cannot say that the circuit court clearly erred in its decision to retain jurisdiction over this appellant.

Affirmed.

Roaf and Neal, JJ., agree.