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Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0261

D.M.

v.

State of Alabama

Appeal from Shelby Juvenile Court
(JU-19-756.01; JU-19-756.02; JU-19-756.03; JU-19-756.04)

MINOR, Judge.

D.M. appeals from the juvenile court's order transferring him to the circuit court for prosecution as an adult for charges of felony murder, see §

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13A-6-2(a)(3), Ala. Code 1975; first-degree robbery, see § 13A-8-41(a), Ala. Code 1975; murder made capital because the victim was in a vehicle, see § 13A-5-40(a)(17), Ala. Code 1975; and murder made capital because the victim was killed during the commission of a first-degree robbery, see § 13A-5-40(a)(2), Ala. Code 1975. D.M. argues that the juvenile court's finding of probable cause to believe that he committed the charged offenses was based only on hearsay testimony. He also argues that the State did not present clear and convincing evidence showing that the transfer to the circuit court was "in the best interest of [D.M.] or the public." (D.M.'s brief., p. 11.)

We hold that D.M. did not preserve for our review his argument that the juvenile court's finding of probable cause was based only on hearsay testimony, and we hold that the State presented clear and convincing evidence showing that transferring D.M. to circuit court for prosecution as an adult was "in the best interest of [D.M.] or the public," R.L.B. v. State, 647 So. 2d 803, 806 (Ala. Crim. App. 1994). Thus, we affirm.

I.

D.M. argues that the juvenile court should not have found that there

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was probable cause to transfer him to the circuit court for prosecution as an adult because, he says, that probable cause was based only on hearsay. He did not, however, preserve this issue for our review.

" 'Matters not objected to at trial cannot be considered for the first time on appeal, since review on appeal applies only to rulings by the trial court.' " N.D.T. v. State, 592 So. 2d 647, 648 (Ala. Crim. App. 1991) (quoting Adams v. State, 585 So. 2d 161, 164 (Ala. 1991) (holding that the defendant did not preserve for appellate review his argument that the juvenile court's probable-cause determination was based only on hearsay)). Because D.M. did not raise this issue in the trial court, he did not preserve it for our review.

II.

D.M. argues that the juvenile court's transfer order does not show that there was clear and convincing evidence that transferring D.M. to the circuit court was in his best interest or in the best interest of the public. We disagree.

"Pursuant to § 12-15-34(a), Ala. Code 1975,^[1] a juvenile 14 years old or older may be transferred for criminal prosecution upon the State's motion if the juvenile is 'alleged to have committed an act which would constitute a crime if committed by an adult.' The juvenile court must make two determinations before transferring a child for criminal prosecution as an adult. First, the court must determine that there is probable cause that the child committed the alleged offense. R.L.B. v. State, 647 So. 2d 803, 806 (Ala. Cr[im]. App. 1994). Secondly, during the dispositional phase, the court must determine by 'clear and convincing' evidence whether a transfer is in the best interest of the child or the public. Id. at 806-07."

J.F.B. v. State, 729 So. 2d 355, 356 (Ala. Crim. App. 1998).

"During the dispositional phase, the juvenile court judge must examine the totality of the circumstances to determine whether a transfer is in the best interest of the child or the public. Williams v. State, 494 So. 2d 887, 890 (Ala. Cr[im]. App. 1986). Included in this analysis is a review of the six factors listed in § 12-15-34(d), Ala. Code 1975:

" '(1) The nature of the present alleged offense.

" '(2) The extent and nature of the prior delinquency record of the child.

" '(3) The nature of past treatment efforts and the nature of the response of the child to the effort.

¹Section 12-15-34 was amended and renumbered by Act No. 2008-277, Ala. Acts 2008, to § 12-15-203, Ala. Code 1975. See, e.g., H.A.M. v. State, 83 So. 3d 577, 581 (Ala. Crim. App. 2011).

" '(4) Demeanor.

" '(5) The extent and nature of the physical and mental maturity of the child.

" '(6) The interests of the community and of the child requiring that the child be placed under legal restraint or discipline.'

"Section 12-15-34(d), however, does not limit the inquiry to the above factors but allows the juvenile court judge also to consider other relevant factors. This Court will overturn the juvenile court judge's decision on a transfer order only if it is 'clearly erroneous'; that is, if the decision is unsupported by any rational basis and is arbitrary and capricious. Williams, 494 So. 2d at 890."

J.F.B. v. State, 729 So. 2d 355, 357 (Ala. Crim. App. 1998).

Although § 12-15-203(d), Ala. Code 1975 (formerly § 12-15-34(d)), requires the juvenile court to consider each of the six factors listed, " 'the weight to be given each of those factors in balancing the interests of the juvenile and society must be left to the sound discretion of the juvenile court judge.' " Palmer v. State, 485 So. 2d 1247, 1247-48 (Ala. Crim. App. 1986) (quoting Whisenant v. State, 466 So. 2d 995, 998 (Ala. Crim. App. 1984), rev'd on other grounds, 466 So. 2d 1006 (Ala. 1985)).

" '[T]he weighing of the six statutory factors and other considerations in determining whether a

juvenile should be transferred from the juvenile court to the circuit court for criminal prosecution as an adult does not involve "a mere tallying of the circumstances for the purpose of numerical comparison".... Rather, it is a balancing and weighing process wherein one statutory factor may outweigh the remaining five statutory factors.'

"N.D.T. v. State, 592 So. 2d 647, 650 (Ala. Cr[im]. App. 1991)."

J.S.A. v. State, 615 So. 2d 1288, 1290-91 (Ala. Crim. App. 1993).

At the transfer hearing, Investigator Christopher Currington testified about his investigation of the robbery and murder of Stanley Turner, from which D.M.'s charges stemmed. Inv. Currington testified that Turner was shot while he sat in his vehicle at the Sonesta Extended Stay Suites on Greenhill Parkway in Shelby County. During his investigation into Turner's death, Inv. Currington learned the following: that D.M. claimed Turner had "swindled" him out of \$500; that on October 20, 2019, someone told D.M. that Turner was at a party at the Sonesta Extended Stay Suites; that D.M. and four other juveniles traveled to the Sonesta Extended Stay Suites to rob Turner; that once they arrived at the Sonesta Extended Stay Suites, one of the juveniles in the vehicle got out to look for Turner and, while walking around looking for Turner,

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telephoned D.M., who was waiting in the vehicle, to let him know Turner's location; that, when Turner got into his vehicle, one of the juveniles in the vehicle with D.M. parked behind Turner's vehicle, blocking Turner in; that D.M. got out of the vehicle and stepped up to Turner's vehicle; that, although no one saw D.M. shoot Turner, after D.M. stepped up to Turner's vehicle the juveniles in the vehicle heard a gunshot; that after the gunshot D.M. got back into the vehicle with the other four juveniles and handed a gun to someone in the vehicle; and that D.M. later told at least one of the juveniles in the vehicle not to tell the police anything.

The circuit court also heard the testimony of LeAnn Rigney, the juvenile probation officer who prepared the probation report required by § 12-15-203(e), Ala. Code 1975. The report's six headings mirrored the six factors listed in § 12-15-203(d).

For the first factor—"[t]he nature of the present alleged offense"—the report contained an explanation of each criminal offense D.M. was charged with committing. For the second factor—"[t]he extent and nature of the prior delinquency record of the child"—the report detailed an incident at school involving D.M. that led to a disorderly

conduct charge being filed against D.M. Although that charge was dismissed and the case closed, D.M. was suspended from school for three days as a result of that incident. For the third factor—"[t]he nature of past treatment efforts and the nature of the response of the child to the effort"—the report provided that "no consequences or treatment options were recommended for [D.M.] through the juvenile court system" for the incident at school, and the report revealed that D.M. and D.M.'s mother denied that D.M. had any past counseling interventions or prescriptions for any psychotropic medications. For the fourth factor—"[d]emeanor"—the report noted that, during Rigney's two interviews with D.M. at the juvenile-detention center, D.M. was polite and responded to all Rigney's questions "thoughtfully and appropriately." Rigney reported that D.M. spoke clearly during the interview but that, when he was nervous or unsure how to answer a question, he "would sometimes cover his eyes." Rigney noted: "It was obvious during the interview that the severity of these charges and this situation is becoming real to [D.M.]." For the fifth factor—"[t]he extent and nature of the physical and mental maturity of the child"—the report noted that,

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although D.M. is "a bit small" for his age, he was a healthy 15-year old with no known medical problems and no physical limitations. The report noted that D.M. struggled academically in school, making mostly Cs and Ds. For the sixth factor—"[t]he interests of the community and of the child requiring that the child be placed under legal restraint or discipline"—Rigney admitted in the report that D.M. "lacks juvenile court involvement," but she noted that the charges against him are "extremely serious and alarming to the community as a whole."

After detailing the evidence presented at the hearing, the juvenile court stated in its transfer order:

"Based upon a review of the ore tenus testimony presented, together with a review of the documentary evidence submitted by stipulation, and considering the factors set forth in Section 12-15-203(d)(1)-(6), the Court finds as follows:

"A. No evidence exists for the Court to believe that the minor child herein is committable to an institution, department, or agency for individuals with an intellectual disability or mental illness.

"B. That probable cause to believe that a crime was committed, to-wit: Murder/Capital Murder, and that the perpetrator of said crime was [D.M.], the child herein, was sufficiently presented and the Court finds said probable cause.

"C. That, upon a review of the ore tenus testimony presented, together with a review of the documentary evidence submitted by stipulation, and considering the factors set forth in Section 12-15-203(d)(1)-(6), the Court finds that, based upon the circumstances of the allegations made herein and considering the relative lack of any prior delinquency record, together with the interest of the community, the minor child herein shall be transferred to the Circuit Court of Shelby County, Alabama for criminal prosecution herein. The Court specifically finds, based upon the information contained in the pre-transfer report of the Juvenile Probation Officer, the Court finds that the juvenile court cannot offer any rehabilitative measures that are consistent with the best interests of this child and society as a whole."

(C. 46-47.)

The juvenile court's transfer order makes clear that, in transferring D.M. to the circuit court, the juvenile court considered each factor listed in § 12-15-203(d). Although in its order the juvenile court did not make findings about each of the six factors, specific findings about each factor are unnecessary for the order to comply with § 12-15-203. J.S.A., 615 So. 2d at 1290-91 ("The juvenile court need not make a specific finding as to each of the six factors to be considered under § 12-15-[203](d), but [its] order must contain some statement that all the factors were considered,

in order that the appellate courts can make a determination that the statutory requirements have been met. If the transferring court states that all six factors of § 12-15-[203](d) have been considered, then its order complies with the law." (internal citations omitted)). The juvenile court's order, by stating that the juvenile court transferred D.M. to the circuit court after "considering the factors set forth in Section 12-15-203(d)(1)-(6)," contains, in essence, the required statement that the juvenile court considered all six factors listed in § 12-15-203(d). Put differently, because the transfer order states that the juvenile court considered the factors in subsections (1) through (6) of § 12-15-203(d)—that is, all the subsections of § 12-15-203(d)—the transfer order "complies with the law" requiring that the juvenile court state that it considered all six factors of § 12-15-203(d).

Citing T.L.N. v. State, 719 So. 2d 260 (Ala. Crim. App. 1997), D.M. also argues that the juvenile court improperly considered D.M.'s earlier school disciplinary events in deciding whether to transfer D.M. to the circuit court. He says that a juvenile court may consider only a juvenile's prior adjudications of delinquency and may not consider incidents that did

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not result in an adjudication of delinquency. (D.M.'s brief, pp. 22-23.)

In T.L.N., the juvenile court, in finding that the juvenile had a prior delinquency record, considered earlier incidents involving the juvenile that had not resulted in adjudications of delinquency. We said in T.L.N. that "a 'prior delinquency record of the child' embraces only adjudications of delinquency." T.L.N., 719 So. 2d at 263. Because the juvenile court found that the juvenile had a prior delinquency record based on run-ins with law-enforcement officers that never resulted in an adjudication of delinquency, we remanded for the juvenile court to consider its transfer order without considering those incidents as evidence of a record of delinquency under § 12-15-203(d)(2), Ala. Code 1975. We noted, though, that the juvenile court could consider those same incidents under § 12-15-203(d)(3) as evidence of the nature of past treatment efforts and the juvenile's response to those treatment efforts.

Here, though, the juvenile court's transfer order states that, in transferring D.M. to the circuit court, the juvenile court "consider[ed] the relative lack of any prior delinquency record." (C. 46.) So we do not have here the problem we had in T.L.N. of the juvenile court improperly

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considering prior disciplinary events that did not result in an adjudication of delinquency as evidence of a record of delinquency under § 12-15-203(d)(2).

D.M. also argues that the juvenile court transferred him to the circuit court for prosecution as an adult based "solely upon the nature of the charged offense," without giving proper consideration to the other factors that, he says, show that D.M. should remain in juvenile court.

It is true, as D.M. contends, that a juvenile court may not transfer a juvenile to circuit court based "solely on the nature of the offense itself" but should "look to the facts underlying the offense in order to determine whether a transfer is warranted." A.W.M. v. State, 627 So. 2d 1148, 1152 (Ala. Crim. App. 1993) (quoting Ex parte J.D.G., 604 So. 2d 378, 384 (Ala. 1992) (Kennedy, J., dissenting from the quashing of a write of certiorari)). But what weight to assign each factor is within the discretion of the juvenile court. See, e.g., J.S.J. v. State, 666 So. 2d 109, 112 (Ala. Crim. App. 1995). We have held that, when nearly all the factors weigh in favor of treating the youth as a juvenile, the severity of the offense may still tip the scales in favor of transferring the juvenile to be prosecuted as an

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adult. See A.W.M., 627 So. 2d 1148.

In A.W.M., a 15-year-old juvenile "aided and abetted" 4 other juveniles in a robbery and capital murder. The juvenile had no prior delinquency record, no past treatment efforts, and his demeanor was assessed as "mannerable and cooperative." His grades in school were "fair to good," although he had been suspended from school twice, one of those times for fighting. He had no negative reports about his behavior while he was detained. The juvenile had positive reports from a supervisor at his summer job, and the juvenile's parents were active and supportive in his life. The probation officer who completed the probation report for the juvenile court's consideration indicated that the juvenile "may respond positively toward treatment in the juvenile system." Although he recommended that the juvenile be transferred to stand trial as an adult "due to the nature of said offense and in the interest of the community," the probation officer testified at the transfer hearing that his recommendation was "very hard" to make because there was a strong possibility, he said, that the juvenile would do well in the juvenile system. On appeal, we upheld the juvenile court's order transferring the juvenile

to the circuit court. We said:

"Despite the fact that this is a close case and that the decision of the juvenile court is not necessarily one this Court would have reached, we cannot say that the juvenile court's transfer order was based solely on the nature of the offense or was unsupported by clear and convincing evidence. In our opinion, the decision of the juvenile court was based on the facts underlying the offense and the circumstances surrounding A.W.M.'s participation in the offense, in conjunction with the other relevant statutory factors.

"The appellant was physically and mentally mature for his age. He took an active role in the commission of a robbery during which he was armed with a small caliber handgun. There is evidence that he was a major participant in the planning of the robbery, arranging to 'rent' the automobile used in the offense from a classmate for \$50, and discussing how the robbery would be committed during the three and one-half hours he and his co-defendants spent together immediately before the crime was committed. There is every indication present that the appellant knew exactly what he was doing. There is no evidence that he was under the influence of alcohol or drugs. There is also evidence that the victim was not only intentionally killed but was in fact executed.

"....

"The appellant's psychological evaluation indicated that he was 'quiet, soft-spoken, and reasonable' rather than 'defiant, hostile, or insensitive,' and that he had no 'delinquen[t] or anti-social tendencies.' The juvenile judge was authorized to discount that report—and its conclusion that '[A.W.M.] is an excellent candidate for treatment and

rehabilitation'—in light of evidence that the appellant deliberately planned and willingly participated in the hostile and anti-social act of armed robbery.

"....

"In addition, the court was authorized to find that, regardless of the services provided in the juvenile system, the appellant would have been in the custody of the Department of Youth Services only until he was twenty-one years old, a maximum of five years, and that the 'interests of the community ... require[d] that the [appellant] be placed under legal restraint or discipline' for a longer period. Ala. Code 1975, § 12-15-34(d)(6).

"....

"After a careful review of the testimony elicited in this case, we conclude that in making its decision to transfer the appellant, the juvenile court did not consider solely the nature of the offense; instead, the court evaluated the underlying circumstances of the offense and weighed the appellant's participation therein in conjunction with the required statutory factors."

A.W.M., 627 So. 2d at 1154-55.

As in A.W.M., we cannot say that the juvenile court considered only the nature of the offense in transferring D.M. to the circuit court. " 'Even though some of the factors may indicate that it would be in the best interest of the child and the public to treat the youth as a juvenile, the

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judge may still order treatment as an adult after weighing all the factors and circumstances involved.' " M.W. v. State, 571 So. 2d 361, 362-63 (Ala. Crim. App. 1990) (quoting Whisenant, 466 So. 2d at 998). See also N.D.T., 592 So. 2d at 650 ("[I]t is a balancing and weighing process wherein one statutory factor may outweigh the remaining five statutory factors.").

We also note that, to the extent the evidence concerning any of the factors was conflicting, "[t]he clear and convincing standard certainly can be met although the evidence [is] conflicting." J.S.J., 666 So. 2d at 112.

After reviewing the record we find that there was clear and convincing evidence to support the juvenile court's transfer of D.M. to the circuit court. Thus, the juvenile court's order transferring D.M. to the circuit court to be prosecuted as an adult is affirmed.

AFFIRMED.

Windom, P.J., and Kellum, McCool, and Cole, JJ., concur.