

DIVISION IV

ARKANSAS COURT OF APPEALS

No. CA06-1464

CHARLES EDWARD FORTE,
APPELLANT

v.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered 24 October 2007

AN APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[CR2006-1181]

THE HONORABLE CHRISTOPHER
CHARLES PIAZZA, CIRCUIT JUDGE

AFFIRMED

D. P. MARSHALL JR., Judge

Sixteen-year-old Charles Forte was charged in circuit court with six counts of aggravated robbery and five counts of theft of property. He moved the circuit court to transfer his case to juvenile court or order extended juvenile jurisdiction. The court denied Forte's motions and he appeals.

At the transfer hearing, the circuit court heard from witnesses about Forte's alleged conduct, his criminal history, his character, and his chances for rehabilitation. Elizabeth Parks testified that Forte, armed with a handgun, demanded her money one night while she was at a laundromat. The next night, another group of victims was robbed of money and cell phones at gunpoint. The police officer who investigated those crimes testified at the transfer hearing. He said that two of the victims identified Forte in a photo line-up as a perpetrator. The court heard from Forte's former probation officer, as well as one of his teachers, and his mother. Finally, an employee

of the Division of Youth Services who advocates for juveniles in custody testified about the rehabilitation programs available to Forte if his case was transferred to juvenile court.

From this body of evidence, the circuit court had to find clear and convincing reasons to support its decision about Forte's transfer motion. *Williams v. State*, 96 Ark. App. 160, 162, ___ S.W.3d ___, ___ (2006). In doing so, the court had to consider and make written findings on each of ten statutory factors. Ark. Code Ann. § 9-27-318(g) and (h) (Supp. 2007); Ark. Code Ann. § 9-27-503(c) and (d) (Supp. 2005). The State did not have to present evidence on all ten factors. *Box v. State*, 71 Ark. App. 403, 405, 30 S.W.3d 754, 755 (2000). And the court was not required to accord equal weight to each of the factors. *Ibid.*

Here, the circuit court assigned most weight to "the seriousness of the alleged offense and whether the society requires protection and prosecution, whether it's committed in an aggressive, violent manner, and you've got the firearm, and whether it was against a person or property." We have considered the entire record and see no error in the circuit court's denial of the transfer motion. *Box*, 71 Ark. App. at 405, 30 S.W.3d at 755.

Forte argues that the circuit court essentially ruled that no aggravated-robbery case will ever be transferred to juvenile court. We disagree. Here is what happened. At the hearing—after the court denied Forte's motion to transfer—Forte's counsel asked the court "when is aggravated robbery going to be able to [be] transferred to

juvenile?” Judge Piazza replied, “[I]n my mind it won’t be because having, having a gun placed on someone . . . when you start placing someone in fear of death . . . then, you’ve taken a step that . . . takes you into an adult world . . .” We do not believe the circuit court’s statement was meant to cover every aggravated-robbery case. Instead, by its own terms, this post-decision statement addressed those cases, like this one, which involve conduct as serious and violent as robbery with a firearm.

A person can commit aggravated robbery in many ways, some less serious than Forte’s alleged conduct. For example, a ninth-grader could beat a classmate at school and steal his wallet. Or a thirteen-year-old could rob someone at a concert by pretending to have a pistol in his pocket, when in fact it was only his hand. The aggravated-robbery statute would apply in both instances; there would be a robbery with a serious physical injury in the first case and a robbery with a representation of a deadly weapon in the second. Ark. Code Ann. § 5-12-103 (Repl. 2006). But a judge could easily find either of these alleged crimes less serious than a robbery with a gun. In these hypothetical cases, and others, the Ark. Code Ann. § 9-27-318 and § 9-27-503 factors would weigh differently than they do in a case such as Forte’s, and all the circumstances might well warrant juvenile jurisdiction.

In Forte’s case, we must consider the circuit court’s post-decision statement in the context of its prior ruling. The court had just emphasized the facts about the seriousness of Forte’s alleged crime: he was charged with robbing a young woman in a vulnerable position; he had a handgun; and he was implicated in other robberies at

gunpoint. The court's general views about transferring aggravated-robbery cases to juvenile court did not prematurely foreclose the possibility of transferring Forte's case.

We are confident that the circuit court followed the statute and considered all ten factors before denying Forte's transfer motion. The court's order recites twice that it did so. We note, however, that the court failed to make written findings on each factor as required by Ark. Code Ann. § 9-27-318(h). The court's order was a form listing the ten factors, with a blank for the court to enter a mark or make comments by each one. The court entered a mark beside the first three factors, but left the other seven factors blank. We do not reach this defect, however, because Forte failed to bring it to the circuit court's attention. *Williams*, 96 Ark. App. at 163-64, ___ S.W.3d at ___.

Affirmed.

BAKER and MILLER, JJ., agree.