

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA 11-998

C.L.

APPELLANT

Opinion Delivered May 30, 2012

V.

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTH DIVISION
[NO. CR-11-680]

STATE OF ARKANSAS

APPELLEE

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

DOUG MARTIN, Judge

The State charged C.L. in Pulaski County Circuit Court, Seventh Division, with aggravated robbery, theft of property, and theft by receiving, committed on January 15, 2011, at a time when C.L. was fifteen years old.¹ The State further alleged in the information that C.L.'s sentence should be enhanced for employing a firearm in the commission of a felony and acting in concert with two or more persons. C.L. moved to transfer his case from the criminal division of circuit court to the juvenile division. Following a hearing on June 17, 2011, the trial court denied C.L.'s motion. In this interlocutory appeal, C.L. argues that the trial court erred in permitting the State to introduce evidence from a prior juvenile-court proceeding. We affirm.

¹In Pulaski County Circuit Court, First Division, C.L. was charged with capital murder and aggravated robbery, committed on November 20, 2010. Similar to the present case, C.L. moved to transfer that case from the criminal division of circuit court to the juvenile division. The trial court's denial of that motion is addressed in a separate appeal. *See C.L. v. State*, CACR 11-999.

Arkansas Code Annotated section 9-27-318(c)(2) (Repl. 2009) provides that a prosecuting attorney may charge a juvenile in either the juvenile or criminal division of circuit court when a case involves a juvenile fourteen or fifteen years old when he engages in conduct that, if committed by an adult, would be:

- (A) Capital murder, § 5-10-101;
- (B) Murder in the first degree, § 5-10-102;
- (C) Kidnapping, § 5-11-102;
- (D) Aggravated robbery, § 5-12-103;
- (E) Rape, § 5-14-103;
- (F) Battery in the first degree, § 5-13-201; or
- (G) Terroristic act, § 5-13-310.

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 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. *Cole v. State*, 2012 Ark. App. 281. We will not reverse a trial court's determination of whether to transfer a case unless that decision is clearly erroneous. *Id.*

C.L. does not challenge the sufficiency of the evidence supporting the trial court's denial of his motion to transfer the case from the criminal division of circuit court to the juvenile division. Rather, C.L. argues that the trial court abused its discretion in admitting

evidence, elicited through his mother's testimony at the transfer hearing, pertaining to a prior juvenile-court proceeding.

At the transfer hearing, Linda Fay Burton was asked by the deputy prosecuting attorney about C.L.'s involvement with the juvenile-court system. Burton testified that she was present at the Little Rock Police Department on Christmas Eve 2009 when authorities read the juvenile-*Miranda* rights to C.L. The following colloquy occurred:

[DEFENSE COUNSEL]: Your Honor, I'm going to object because Mr. Logan was not adjudicated delinquent in any case in juvenile court.

[DEPUTY PROSECUTING ATTORNEY]: And, Judge, there, he was –

[DEFENSE COUNSEL]: I'm sorry. It's not relevant to this hearing today.

THE COURT: Okay.

[DEPUTY PROSECUTING ATTORNEY]: I believe it will be relevant, Judge, because his prior history and behavior is relevant. He was on some supervision, conditions of release while in juvenile court and he also there specific circumstances [sic] that this witness can attest to as to why that case was dismissed and he was not adjudicated in juvenile court.

THE COURT: Okay, overruled.

Burton then continued with her testimony. Burton stated that, while in police custody, C.L. gave a statement admitting his involvement in a residential burglary. According to Burton, C.L. was released from detention with conditions and placed under the supervision of a probation officer. Burton testified that C.L. violated the conditions of his release on several occasions and that she was present every time C.L. was brought before the juvenile court. Burton testified that C.L.'s residential-burglary charge was eventually nolle prossed because the victim no longer wanted to pursue the prosecution of C.L.

Arkansas Code Annotated section 9-27-309(a)(2) (Repl. 2009) provides that all records may be closed and confidential within the discretion of the circuit court, except records of delinquency adjudications for which a juvenile could have been tried as an adult shall be made available to prosecuting attorneys for use at sentencing if the juvenile is subsequently tried as an adult or to determine if the juvenile should be tried as an adult.

C.L. argues that Burton's testimony did not fall within the delinquency-adjudication exception to the statutory requirement that juvenile-court records be kept confidential. C.L. contends that he was only fourteen years old at the time of the prior juvenile-court proceeding and that, according to section 9-27-318(c)(2), he could not have been prosecuted as an adult because residential burglary is not among the offenses for which charges could have been filed in the criminal division of circuit court. C.L. thus argues that, under section 9-27-309(a)(2), his juvenile records should have remained confidential. C.L. further argues that he was not adjudicated delinquent in the prior juvenile-court proceeding given that the residential-burglary charge was nolle prossed.

A party cannot change the grounds for an objection on appeal but is bound by the scope and nature of the arguments made at trial. *Vanesch v. State*, 343 Ark. 381, 37 S.W.3d 196 (2001). The burden of obtaining a ruling is upon the movant, and unresolved questions and objections are waived and may not be relied upon on appeal. *Id.* (citing *Aaron v. State*, 319 Ark. 320, 891 S.W.2d 364 (1995)). At the transfer hearing, C.L. alluded to the fact that he was not adjudicated delinquent in the prior juvenile-court proceeding; however, his objection thereafter was based on relevance. On appeal, C.L.'s argument has evolved and

expanded to include his statutory interpretation of “delinquency adjudication” in section 9-27-309. Further, C.L. has abandoned his argument with respect to relevance. Accordingly, we are unable to address the merits of C.L.’s current argument because this court will not consider an argument raised for the first time on appeal. *B.C. v. State*, 344 Ark. 385, 40 S.W.3d 315 (2001).

Affirmed.

VAUGHT, C.J., and BROWN, J., agree.