

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR11-279

HUNTER BLAKE LEWIS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 16, 2011

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[Nos. CR-10-310, CR10-313]HONORABLE WALTER KELVIN
WYRICK, JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

After separate incidents involving two different victims, the State of Arkansas filed two felony informations in the Miller County Circuit Court against appellant Hunter Blake Lewis. One of the informations charged Lewis with sexual assault in the second degree while the other charged him with rape. In response, Lewis filed two motions to transfer his criminal cases to juvenile court. The motions were considered together at a juvenile-transfer hearing, after which the trial court denied the motions to transfer. Lewis brings this interlocutory appeal, arguing that the trial court erred in denying his motions to transfer his cases to juvenile court. We affirm.

A prosecuting attorney has the discretion to charge a juvenile sixteen years of age or older in the juvenile or criminal division of circuit court if the juvenile has allegedly engaged in conduct that, if committed by an adult, would be a felony. Ark. Code Ann. § 9-27-318(c)(1) (Repl. 2009). 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. Ark. Code Ann. § 9-27-318(h)(2). Clear and convincing evidence is the degree of proof that will produce in the trier of fact a firm conviction as to the allegation sought to be established. *Neal v. State*, 2010 Ark. App. 744, at 6, ___ S.W.3d ___, ___. We will not reverse a trial court's determination of whether to transfer a case unless that decision is clearly erroneous. *Id.* at 6, ___ S.W.3d at ___. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that a mistake has been committed. *Id.*, ___ S.W.3d at ___.

Arkansas Code Annotated section 9-27-318(g) sets forth the factors the trial court must consider and make written findings on at a transfer hearing. Those factors are (1) the seriousness of the alleged offense and whether the protection of society requires prosecution 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 that are likely to rehabilitate the juvenile before the expiration of the juvenile's twenty-first birthday; (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. *Neal*, 2010 Ark. App. 744, at 6–7, ___ S.W.3d at ___. The trial court does not have to give equal weight to each factor. *Id.* at 7, ___ S.W.3d at ___.

According to the informations filed against Lewis, the second-degree sexual assault and the rape allegedly occurred on April 21, 2010, and May 2, 2010, respectively. The informations list Lewis's date of birth as October 18, 1993, making him sixteen at the time of the alleged offenses. Both victims testified at the hearing. The victim of the alleged second-degree sexual assault, K.M., testified that she was sixteen years old when Lewis offered to take her home from church. K.M. testified that on the way home Lewis pulled his truck over into a gravel pit. He began kissing her and fondling her breasts. When she asked him to stop, he tossed her phone toward the side of the vehicle, sat on top of her, and wrapped his legs around her. Despite her protests, he continued to kiss her and placed his hands inside her shirt and inside her shorts. After inserting the tip of his finger in her vagina, he became frustrated with K.M. and stopped.

The second victim, S.E., testified that at the time of the incident with Lewis she was sixteen years old and had known him only one week. She met Lewis at a track meet, and a few days later, she attended one of his baseball games. S.E. said that she and Lewis went fishing the

next Sunday. When Lewis was taking S.E. home, he parked his truck in an isolated area, locked the doors of the vehicle, got on top of S.E., held down her hands, retrieved a condom from the console of the truck, inserted his finger in her vagina, and then inserted his penis in her vagina, forcing her to have sex with him.

Wesley Penny, Sr., from the Miller County Sheriff's Office, testified that he investigated S.E.'s report of rape. According to his testimony, when he arrived at the hospital, S.E. was visibly upset, crying, and scared. At the hospital, Jamie Attaway, a physician's assistant, examined S.E. Attaway testified that she found multiple abrasions and semen on the outer area of S.E.'s vagina. She added that she had never seen abrasions similar to those she found on S.E. resulting from consensual sex.

The coordinator of the juvenile division of the Public Defender Commission, Scott Tanner, testified that there are programs specifically designed for juveniles convicted of rape, which can provide services until the juvenile's twenty-first birthday. Susie Kennedy, a Miller County Youth Services case manager and certified juvenile probation officer, also testified that there are sex-offender programs available for juveniles. She said that if Lewis were convicted in juvenile court, he would likely be released from the juvenile justice system when he turned eighteen years old. She said it is a time-consuming process to retain a juvenile beyond his or her eighteenth birthday and that a determination by the Division of Youth Services (DYS) and numerous court appearances/hearings before a judge would be required. She answered affirmatively to the question that 99.9 percent of juvenile offenders are released from the DYS when they turn eighteen.

Lewis testified that he had no criminal background, that his home life was excellent, and that he made As and Bs at school. He denied the encounter with K.M. and said that the sexual encounter with S.E. was consensual. He testified that he understood right from wrong and that rape is a serious allegation and is wrong. Lewis's mother testified that Lewis made good grades and that they had a good family life. She also said that he had become more immature in the past few years. Several other witnesses (Lewis's grandfather, Lewis's pastor, a member of the school board, and Lewis's teacher/coach) testified to Lewis's good character and lack of violent tendencies.

After the parties rested, the trial court took the matter under advisement and later entered written findings of fact denying Lewis's motions to transfer. In doing so, the trial court addressed each of the factors set forth in section 9-27-318(g). In Lewis's appeal, he challenges each of the findings and credibility determinations made by the trial court.

In the present case, it is apparent from the trial court's findings of fact that it placed great weight on the evidence establishing that Lewis, in less than one month, in two separate incidents, invited a sixteen-year-old girl into his truck for a ride home, pulled his truck over into isolated areas, and forced himself on the victims despite their protests, sexually assaulting one and raping the other. The trial court considered these acts premeditated, serious, and violent. The trial court also took into consideration the fact that Lewis acted alone, understood that his conduct was wrong, and had no deficits in his family life that would excuse his conduct. Finally, the trial court considered that Lewis was seventeen years old at the time of the hearing, which would limit his rehabilitation opportunities in the juvenile system. To the extent that these findings involve

credibility determinations made by the trial court, we note that the credibility of witnesses is an issue for the finder of fact. *R.M.W. v. State*, 375 Ark. 1, 8, 289 S.W.3d 46, 51 (2008). On appeal, we have no means to assess witness credibility and may not act as the finder of fact. *Id.*, 289 S.W.3d at 51. Accordingly, we hold that these findings support the trial court's decision, and the trial court's denial of Lewis's motions to transfer to juvenile court was not clearly erroneous.

Affirmed.

PITTMAN and GRUBER, JJ., agree.