



ORIGINAL

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

STATE OF OKLAHOMA,)
)
 Appellant,)
 FILED)
 IN COURT OF CRIMINAL APPEALS)
 STATE OF OKLAHOMA)
 v.)
 JAN - 3 2019)
 JOHN D. HADDEN)
 CLERK)
 M. W.,)
)
 Appellee.)

NOT FOR PUBLICATION
APPROVED FOR
RELEASE TO PUBLIC
No. JS 2018-0917

SUMMARY OPINION

LUMPKIN, JUDGE:

Appellee, M. W., born January 4, 2001, was charged February 16, 2018, as a Youthful Offender in Tulsa County District Court Case No. YO-2018-0009 with Count 1 – Rape, First Degree, and Count 2 – Sexual Battery. Appellee’s motion for certification as a Juvenile was granted by the Honorable James W. Keeley, Special Judge, on August 29, 2018. The State appeals and seeks reversal of the ruling sustaining Appellee’s motion to certify him as a Juvenile pursuant to 10A O.S. § 2-5-206(F).

This appeal was assigned to the Accelerated Docket of this Court pursuant to Rule 11.2(A), *Rules of the Oklahoma Court of*

Criminal Appeals, Title 22, Ch.18, App. (2018). Oral argument was held December 13, 2018, before the Court *en banc*. At the conclusion of oral argument, the parties were advised of the decision of this Court.

The State argued that (1) the trial court erroneously relied primarily on the amount of time available for Appellee to complete the treatment and rehabilitation as a Youthful Offender when reaching his decision on reverse certification; and (2) the trial court abused its discretion by relying upon an erroneous and unsupported factual recitation of events.

At the reverse certification hearing, it is Appellee's burden to overcome the presumption and to prove that he should be certified as a child. *C.L.F. v. State*, 1999 OK CR 12, ¶ 4, 989 P.2d 945, 946. Title 10A O.S.2011, § 2-5-206(F), directs that when ruling on a motion for certification to the juvenile justice system, the court shall consider seven guidelines¹ with greatest weight to be given to

¹ 1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons, and, if personal injury resulted, the degree of personal injury;

3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions;

the first three listed.

Absent an abuse of discretion, the judge, as trier of fact, has the discretion and the prerogative to assess the credibility of the witnesses and to weigh and value their testimony and opinions. *R.J.D. v. State*, 1990 OK CR 68, ¶ 16, 799 P.2d 1122, 1125. An abuse of discretion has been defined by this Court as a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented in support of and against the application. *A.R.M. v. State*, 2011 OK CR 25, ¶ 7, 279 P.3d 797, 799. As set forth in *W.D.C. v. State*, 1990 OK CR 71, ¶ 8, 799 P.2d 143, 145, our duty on appellate review is not to conduct our own weighing *de novo*, but to determine whether the decision of the Magistrate is supported by the law and facts of the case. In this case we do not

4. The sophistication and maturity of the accused person and the capability of distinguishing right from wrong as determined by consideration of the person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living;

5. The prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system;

6. The reasonable likelihood of rehabilitation of the accused person if the accused is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and

7. Whether the offense occurred while the accused person was escaping or on escape status from an institution for youthful offenders or delinquent children.

find an abuse of discretion.

DECISION

The order of the District Court of Tulsa County granting the motion to certify Appellee as a Juvenile is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE JAMES KEELEY, SPECIAL JUDGE**

APPEARANCES AT TRIAL

KENNETH A. ELMORE
TARA BRITT
ASSIST DISTRICT ATTORNEYS
TULSA COUNTY
500 S. DENVER AVE.
SUITE 900
TULSA, OKLAHOMA 74103
COUNSEL FOR THE STATE

ALLEN M. SMALLWOOD
1310 SOUTH DENVER AVE.
TULSA, OKLAHOMA 74119
COUNSEL FOR DEFENDANT

**APPEARANCES ON
APPEAL**

KENNETH A. ELMORE
ASST DISTRICT ATTORNEY
TULSA COUNTY
500 S. DENVER AVE.
SUITE 900
TULSA, OKLAHOMA 74103
COUNSEL FOR THE STATE

ALLEN M. SMALLWOOD
1310 SOUTH DENVER AVE.
TULSA, OKLAHOMA 74119
COUNSEL FOR APPELLEE

OPINION BY: LUMPKIN, J.

LEWIS, P.J.: Concur

KUEHN, V.P.J.: Concur

HUDSON, J.: Concur

ROWLAND, J.: Concur

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