

THE SUPREME COURT OF ARKANSAS HELD THAT THE JUVENILE
TRANSFER STATUTE IS NOT UNCONSTITUTIONAL UNDER
SEPARATION OF POWERS.

In *C.B. v. State*,¹ the Arkansas Supreme Court affirmed that Arkansas Code Annotated Section 9-27-318, the juvenile-transfer statute, was constitutional.² The court also upheld the decision of the circuit court denying C.B.’s request for transfer to juvenile court.³

The events surrounding this appeal began on January 30, 2010 when C.B. (16), N.D. (15), and Brandon Henderson (18) escaped from the Jack Jones Juvenile Justice Center located in Pine Bluff, Arkansas.⁴ C.B. and N.D. attacked a security guard, Leonard Wall, in the process of escape.⁵ Wall died later as a result of the attack.⁶ Another security guard was also attacked during the process of the juveniles’ escape but suffered only injuries as a result.⁷ The juveniles went on to force a couple out of a vehicle at a gas station and steal the car as a means of escape.⁸

C.B. and N.D. were apprehended two days later in Fort Smith, Arkansas.⁹ Henderson was arrested the following day in Oklahoma.¹⁰ C.B. was charged with crimes resulting from the escape on March 11, 2010.¹¹ The charges included “the felony offenses of capital murder, three counts of aggravated robbery, first-degree escape, theft of property (valued at \$2500 or more), second-degree battery, and the misdemeanor offense of theft of property (valued at less than \$500).”¹² C.B. filed two motions regarding these charges including a motion to dismiss declaring section 9-27-318 unconstitutional and a motion to transfer to juvenile court.¹³ These motions were denied, and C.B. appealed.¹⁴

The court first addressed the motion to dismiss on constitutional grounds.¹⁵ Section 9-27-318 gives the prosecuting attorney discretion in choosing to file a case in the juvenile or criminal division of a circuit court if

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1. 2012 Ark. 220, ___ S.W.3d ___.
 2. *C.B.*, 2012 Ark. 220, ___ S.W.3d ___.
 3. *Id.* at 1, ___ S.W.3d at ___.
 4. *Id.* at 2, ___ S.W.3d at ___.
 5. *Id.*, ___ S.W.3d at ___.
 6. *Id.*, ___ S.W.3d at ___.
 7. *Id.*, ___ S.W.3d at ___.
 8. *C.B.*, 2012 Ark. 220 at 2, ___ S.W.3d at ___.
 9. *Id.*, ___ S.W.3d at ___.
 10. *Id.*, ___ S.W.3d at ___.
 11. *Id.*, ___ S.W.3d at ___.
 12. *Id.*, ___ S.W.3d at ___.
 13. *Id.*, ___ S.W.3d at ___.
 14. *C.B.*, 2012 Ark. 220 at 2, ___ S.W.3d at ___.
 15. *Id.* at 3, ___ S.W.3d at ___.

the juvenile is at least sixteen at the time of the crime and the crime would be a felony if committed by an adult.¹⁶ Under the discretion of the court or by motion of any party, a hearing will be held to determine if the case should be moved to a division other than the one it was initially filed in.¹⁷

C.B. made four arguments regarding the constitutionality of this statute.¹⁸ The first was that the discretion given to the prosecuting attorney violated the separation of powers required by the Arkansas Constitution in Article 4.¹⁹ Section 3 of amendment 80 gives the Arkansas Supreme Court complete authority to create rules of pleading, practice and procedure regarding the courts.²⁰ No other branch of government may abridge this authority.²¹ The court has held that any rule of procedure created by another branch is a violation of this right even if the procedure does not directly contradict with any other procedure already in place.²² C.B. claimed that the discretion exercised by the prosecuting attorney was creation of court procedure on behalf of the legislature.²³ The court rejected the argument that the discretion is a rule of pleading, practice, or procedure.²⁴ The court instead asserted that this discretion is an area of substantive law that is “rooted in public policy.”²⁵

The second constitutional argument was that the statute violated Article 2, Section 12 of the Arkansas Constitution by stripping away statutory protections of juveniles.²⁶ This section explains that only the General Assembly may set aside laws of the state.²⁷ The court disregarded this claim based on the fact that the General Assembly passed the statute in question giving the discretionary authority to the prosecuting attorney.²⁸

The third argument was a claim of violation of equal protection under the law pursuant to the Fourteenth Amendment. C.B.’s statement of the equal protection standard would require all juveniles to be first charged in juvenile court.²⁹ Because “juveniles” do not belong to a suspect class, the statute must only “have a rational basis and [be] reasonably related to a le-

16. *Id.*, ___ S.W.3d at ____.
17. *Id.*, ___ S.W.3d at ____.
18. *Id.* at 3–8, ___ S.W.3d at ____.
19. *Id.* at 3, ___ S.W.3d at ____.
20. *C.B.*, 2012 Ark. 220 at 4, ___ S.W.3d at ____.
21. *Id.*, ___ S.W.3d at ____.
22. *Id.*, ___ S.W.3d at ____.
23. *Id.* at 5, ___ S.W.3d at ____.
24. *Id.*, ___ S.W.3d at ____.
25. *Id.*, ___ S.W.3d at ____.
26. *C.B.*, 2012 Ark. 220 at 6, ___ S.W.3d at ____.
27. *Id.*, ___ S.W.3d at ____.
28. *Id.*, ___ S.W.3d at ____.
29. *Id.* at 7, ___ S.W.3d at ____.

gitimate government purpose.”³⁰ The court determined that there was a rational basis for the legislation.³¹

The fourth and final argument about the constitutionality of the statute was that it was cruel and unusual punishment to try C.B. as an adult.³² To determine whether the punishment was cruel and unusual, there would have to already be a final judgment entered.³³ Anticipation of the punishment is not enough.³⁴ Because there was not yet a final judgment, the court dismissed this claim.³⁵

C.B. also appealed the denial of the motion to transfer.³⁶ When reviewing an initial motion to transfer, a circuit court must decide by clear and convincing evidence that transfer is appropriate.³⁷ On appeal, a court will only reverse a circuit court’s decision if it finds that the decision was clearly erroneous.³⁸ When making this determination, the court looked at the following ten factors: (1) the seriousness of the offense and society’s need for protection; (2) the aggressive manner of the alleged offense; (3) whether the offense was a crime against property or against a person; (4) the juvenile’s culpability; (5) the juvenile’s history; (6) the juvenile’s maturity; (7) whether there a juvenile facilities available that are likely to rehabilitate the juvenile; (8) whether the crime was conducted individually or as part of a group; (9) available information regarding the juvenile’s educational, social, mental, and physical history; and (10) any other relevant information.³⁹

The court concluded that these factors weighed heavily if favor of affirming the denial of transfer.⁴⁰ The court also acknowledged that even if the majority of the factors weighed in favor of reversing the denial to transfer, the violent nature of a crime alone was sufficient to try a juvenile as an adult.⁴¹ C.B. was accused of capital murder, the highest crime that an individual may be charged with.⁴² There was also evidence presented that C.B. assaulted officers on two different occasions in an adult facility after he had been charged with the crime at issue in this case.⁴³ Based on all of this in-

30. *Id.*, ___ S.W.3d at ____.
31. *Id.*, ___ S.W.3d at ____.
32. *C.B.*, 2012 Ark. 220 at 8, ___ S.W.3d at ____.
33. *Id.*, ___ S.W.3d at ____.
34. *Id.*, ___ S.W.3d at ____.
35. *Id.*, ___ S.W.3d at ____.
36. *Id.*, ___ S.W.3d at ____.
37. *Id.* at 9, ___ S.W.3d at ____.
38. *C.B.*, 2012 Ark. 220 at 9, ___ S.W.3d at ____.
39. *Id.* at 9–16, ___ S.W.3d at ____.
40. *Id.* at 16, ___ S.W.3d at ____.
41. *Id.*, ___ S.W.3d at ____.
42. *Id.* at 9–10, ___ S.W.3d at ____.
43. *Id.* at 16, ___ S.W.3d at ____.

formation, the court concluded that there was clear and convincing evidence to uphold the circuit court's ruling.⁴⁴

*C.B. v. State*⁴⁵ upholds the prosecuting attorney's discretion in choosing the appropriate court in which to bring actions against a juvenile over the age of 16. This ruling reaffirmed the public policy rationale that is furthered in limited circumstances by prosecuting a juvenile as an adult. This case exemplifies an important scenario in which this prosecutorial discretion is necessary to best protect society. Most importantly, the case upheld the juvenile transfer statute as constitutional.

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44. *C.B.*, 2012 Ark. 220 at 16, ___ S.W.3d at ___.

45. 2012 Ark. 220, ___ S.W.3d ___.