Circuit Court for Charles County
Case No. C-08-CR-22-000237

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1710

September Term, 2022

QUANEL LOVE BROWN

v.

STATE OF MARYLAND

Beachley,
Shaw,
Killough, Peter K.
(Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: October 11, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Quanel Brown, a juvenile, was convicted as an adult of two counts of first-degree assault and one count of wearing/carrying/transporting a handgun in the Circuit Court for Charles County. He was sentenced to twenty-five years' incarceration, all but six years suspended for the first count of first-degree assault; a consecutive twenty-five years' incarceration, all but six years suspended for the second count of first-degree assault; a consecutive three years' incarceration for the handgun violation and five years' supervised probation upon his release. Appellant timely appealed and presents one question for our review:

1. Did the [C]ircuit [C]ourt abuse its discretion in denying [Appellant's] motion to transfer his case to juvenile court?

BACKGROUND

On March 23, 2022, Charles County police responded to a report of a shooting in White Plains, Maryland. They located two teenage brothers, seventeen-year-old Avonte who had a gunshot wound to his left wrist and a contusion to his head, and nineteen-year-old Avery who was also suffering from a head contusion. Avery reported to police that he and his brother had arranged to buy marijuana through social media from an individual who identified himself as Emanuel. Emanuel and Appellant arrived at the agreed upon location in a vehicle operated by Jalen Chambers, where they talked to Avery and Avonte. An argument ensued and Appellant pulled out a handgun and fired it, shooting Avonte in the wrist. The group began fighting and Appellant continued to fire the weapon. There were no other injuries as a result of the gunfire.

Appellant was subsequently arrested and charged, as an adult, with thirty-six counts including one count of attempted first-degree murder, one count of attempted second-degree murder, two counts of first-degree assault, two counts of armed robbery, one count of use of a firearm in the commission of a felony or crime of violence, and other related offenses. He was sixteen years old at the time of the incident.

Pursuant to Maryland Criminal Procedure Article § 4-202, Appellant filed a motion to transfer his case to juvenile court. He was detained at Cheltenham Youth Detention Center while he awaited a hearing on his motion. Dr. Janel Kelly, a psychologist from the Department of Juvenile Services ("DJS") and Dr. Markisha Bennett, a psychologist retained by the Office of the Public Defender, each conducted an evaluation of Appellant. The following reports were prepared for the court's consideration: a Transfer Report, a Transfer/Waiver Psychological Assessment Report, a Transfer/Waiver Assessment Staffing Team Meeting Outcome Report, and a Confidential Report of Psychological Evaluation with Risk Assessment. At the transfer hearing, several witnesses testified, including Dr. Markisha Bennett, Ms. Krystal Cone (D.C. Social Worker), Ms. Megan Lucas-King (D.C. Case Attorney), Ms. Carol Green (DJS), Ms. Erica Thomas (DJS), Dr. James Fleming, and Dr. Michael Kwitkowski.

Dr. Markisha Bennett prepared the Confidential Report of Psychological Evaluation with Risk Assessment. At the hearing, she testified that Appellant had previously been diagnosed with post-traumatic stress disorder, anxiety, acute depression, major depression, cannabis use disorder, and had experienced several traumatic events in his youth. She

reported that Appellant experienced physical and verbal abuse from his biological parents, and after being removed from their custody, he experienced abuse while in the foster care system. Dr. Bennett testified that Appellant had lost many people in his life, and that one of his friends was recently harmed due to community violence. She stated that Appellant had started therapy at age thirteen, but he was not consistent in that treatment due to his unstable home environment. Dr. Bennett stated that Appellant participated in mental health therapy at Cheltenham where he established a rapport with his therapist and was fully engaged in treatment. In her Report, Dr. Bennett placed Appellant in the Middle Offender Range on the Risk for Dangerousness scale. She recommended that Appellant's case be transferred to the juvenile court and that he be placed in a DJS hardware secure facility like Victor Cullen Center or the Chesapeake Treatment Center Program-The Right Moves.

Ms. Krystal Cone, Appellant's social worker from the D.C. Child and Family Services Agency (CFSA), [1] testified that Appellant had experienced barriers to therapy over the last three years. She stated that Appellant found it difficult to fully disclose everything that was going on in his life, that virtual therapy as opposed to in-person therapy was not the same during the COVID-19 pandemic, and that it was difficult for him to find transportation to in-person therapy. Ms. Megan Lucas-King, an attorney with the D.C. Children's Law Center, testified that Appellant never had a stable home which made it difficult for him to participate in therapy. She stated that she was impressed with

[1] The CFSA is a public child welfare agency in the District of Columbia that functions similarly to the Maryland Department of Social Services (DSS).

Appellant's progress at Cheltenham, and that he had been studying psychology, teaching himself chess, and learning various coping techniques.

Ms. Erica Thomas, a Resource Specialist Supervisor from DJS, prepared the Transfer/Waiver Assessment Staffing Team Meeting Outcome Report. The Report identified the following treatment needs: individual therapy, substance use assessment and treatment, prosocial activities, and mentorship. Based on those treatment needs, DJS recommended placement in the Juvenile Intervention Program at Victor Cullen Center, a hardware secure facility located in Western Maryland, that provides treatment services to male youth; or placement in the Cornell Abraxas Youth Center, a specialized secure treatment program located in Pennsylvania, that provides treatment specifically for males. Ms. Thomas testified that Victor Cullen's programs are typically six to nine months, but are dependent upon the client's progress in the program. Ms. Thomas testified that she could not guarantee that Appellant would be accepted to the program but that she deemed it likely that he would be accepted. Additionally, she stated that the program at Abraxas Youth Center was typically nine to twelve months depending on program involvement and behavior, and that the wait time for Abraxas depended on the out-of-state process, which historically takes more time than an in-state placement.

Dr. James Fleming, a private forensic psychologist, testified that there were several issues with Appellant being placed in Patuxent Institution, a maximum-security adult prison. He stated that incarcerating juveniles as adults results in worse outcomes and greater recidivism, that it is very important to intervene early, quickly, and intensively with juveniles; and that treatment in the juvenile system is more intense and comprehensive than

that at Patuxent Institution. Dr. Fleming stated that Patuxent Institution does not offer trauma-informed care, which was recommended for Appellant in the reports, and that someone with trauma, "especially the amount of trauma in this case documented in these reports," warrants a longer treatment course of eighteen months rather than twelve months.

Finally, Dr. Michael Kwitkowski, the Associate Director for Behavioral Sciences at the Patuxent Institution, testified regarding the process for individuals entering the Youthful Offender Program at the Patuxent Institution. Dr. Kwitkowski stated that the individual must be under twenty-one years of age at the time of sentencing and have a referral from the court. He explained that individuals under the age of eighteen are remanded to the Youth Detention Center in Baltimore City until they reach the age of eighteen. He stated that if an individual is already eighteen at the time of sentencing, that they would travel to Jessup Correctional Institution for in-processing; and after in-processing, the individual could be transported to Patuxent. Dr. Kwitkowski testified that he could have an individual transferred immediately from in-processing straight to Patuxent if the court or legal counsel informed him of the referral.

Dr. Kwitkowski also testified regarding the services offered at the Youthful Offender Program at Patuxent Institution. He explained that the clinicians' focus is to be cognizant of factors that lead young offenders into committing offenses against others. Dr. Kwitkowski provided that the program offers criminal thinking behavior groups and other psychological education groups, but does not offer cognitive behavioral therapy and trauma-focused therapy. Dr. Kwitkowski testified that the waitlist for the program was very modest compared to previous years. Following arguments of counsel, the court

analyzed the required factors under Crim. Proc. § 4-202(d) and ultimately denied Appellant's motion to transfer.

Appellant subsequently entered a conditional guilty plea to two counts of first-degree assault and one count of wearing/carrying/transporting a handgun, reserving the right to appeal the denial of his motion. He was sentenced to twenty-five years' incarceration, all but six years suspended for one count of first-degree assault; a consecutive twenty-five years' incarceration, all but six years suspended for the second count of first-degree assault; and a consecutive three years' incarceration for the handgun violation and upon his release, five years' of supervised probation. Appellant timely appealed.

DISCUSSION

Standard of Review

"The weighing of the five factors by the circuit court is reviewed by an appellate court for abuse of discretion." *Whaley v. State*, 186 Md. App. 429, 444 (2009) (citing *King v. State*, 36 Md. App. 124, 128 (1977)). "Abuse of discretion [exists] where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to [ ] guiding rules or principles." *State v. Robertson*, 463 Md. 342, 364 (2019) (citing *Alexis v. State*, 437 Md. 457, 478 (2014)).

I. The Circuit Court did not abuse its discretion in denying Appellant's motion to transfer his case to juvenile court.

Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03(a)(1) states that "(a) [i]n addition to the jurisdiction specified in Subtitle 8 of this title, the [juvenile] court has exclusive original jurisdiction over:"

> (1) A child:
> (i) Who is at least 13 years old alleged to be delinquent; or
> (ii) Except as provided in subsection (d) of this section, who is at least 10 years old alleged to have committed an act:
> 1. That, if committed by an adult, would constitute a crime of violence, as defined in § 14-101 of the Criminal Law Article; or
> 2. Arising out of the same incident as an act listed in item 1 of this item;

The statute provides that "(d) [t]he [juvenile] court does not have jurisdiction over:"

> (1) A child at least 14 years old alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article;
>
> [. . . .]
>
> (4) A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article:

Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03(d)(1)-(4).

"When a case is brought in criminal court and an accused child is between the ages of fourteen and eighteen, the juvenile defendant may request a transfer back to the juvenile

system." *Whaley*, 186 Md. App. at 444. "In determining whether to transfer jurisdiction under subsection (b) of this section, the court shall consider:"

> (1) the age of the child;
> (2) the mental and physical condition of the child;
> (3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children;
> (4) the nature of the alleged crime; and
> (5) the public safety.

Md. Code Ann., Crim. Proc. § 4-202(d).

Appellant argues the circuit court abused its discretion in denying his motion to transfer jurisdiction by failing to consider relevant evidence of his amenability to treatment. Appellant contends the court relied solely on two factors in reaching its decision: (1) the nature of the offense; and (2) Appellant's engagement with services from the D.C. Child and Family Services Agency as it related to amenability. Appellant argues the court should have relied upon evidence of Appellant's conduct at Cheltenham, which was the most recent, relevant, and therefore, the best evidence of his amenability to treatment. Further, Appellant contends that the court improperly concluded that receiving no treatment would be better for Appellant than receiving treatment. Appellant cites *Davis v. State*, 474 Md. 439 (2021) to support his argument.

The State argues the court analyzed all of the statutory factors and properly determined that a transfer was not in the best interests of Appellant or society. The State contends that amenability was front-and-center in the court's decision-making process, and the court made clear that it considered all of the required factors and analyzed them in

accordance with *Davis*. The State cites *Rohrbaugh v. State*, 257 Md. App. 638 (2023) to support its argument.

In *Davis*, the Supreme Court of Maryland[2] clarified the factors required for a court's consideration in determining whether a juvenile's case should remain under the jurisdiction of the circuit court, focusing its attention on the amenability to treatment factor. 474 Md. at 464. Davis, a juvenile, had been involved in a home invasion with several other juveniles. *Id.* at 441. A shooting occurred and Davis battered the victim with the butt of an assault rifle. *Id.* He was charged, as an adult, with fourteen counts, including "two counts of attempted first-degree murder, home invasion, first-degree assault, use of a firearm in the commission of a crime of violence, and reckless endangerment." *Id.* Davis filed a motion to transfer his case to the juvenile court. *Id.* at 441-42. Four reports were prepared for the court's consideration: "a Reverse Waiver Report prepared by DJS case management specialists, a Mental Health Summary Form prepared by a Hickey mental health clinician, and a Detention Court Report and Detention Behavior Report prepared by Hickey case management specialists." *Id.* at 442. The Reverse Waiver Report addressed the five statutory factors and recounted Davis' prior contacts with DJS in addressing his amenability. *Id.* The Report did not make any specific recommendations and stated that "evaluations would be requested to help determine appropriate services." *Id.* at 443.

[2] On December 14, 2022, by subsequent gubernatorial proclamation, the name of the Court of Appeals was changed to the Supreme Court of Maryland. We shall use the current appellation of that court throughout this opinion.

At the conclusion of the transfer hearing, the court noted the "horrific" nature of the offense:

> It is probably the single most fact – concerning factor with regard to whether or not this young man should remain in the adult system. Everybody's very fortunate here today, that this did not result in a murder, because it very easily could have. But in any event, that it is a very serious, violent offense.

Id. at 449. The court then discussed the four other factors and ultimately denied the transfer motion. *Id.* at 450. On appeal, Davis argued that the court did not properly consider amenability and that the court's view was too narrow. *Id.* at 451. This Court affirmed the trial court's judgment, holding that the factors need not be given equal weight and that a trial court could give predominant weight to the nature of the crime as it may affect public safety. *Id.*

The Supreme Court reversed our decision, concluding that the trial court had not properly considered the amenability factor as "the ultimate determinative factor that takes into account each of the other four factors." *Id.* at 466.

The Court explained that "[t]o determine amenability to treatment, the court needs to know what treatment is or will be available to meet the child's needs and address the child's problems" and "whether those programs would, in fact, be available to the child, for if not, as to that child, they do not exist." *Id.* at 463-64. The Court also noted, in examining the meaning of the term, that amenability encompasses a "willingness" to participate.

The Court explained:

> The five considerations are not in competition with one another. They all must be considered but they are necessarily interrelated and, analytically,

> they all converge on amenability to treatment. The age of the child, for example, may, in some circumstances, be critical in determining whether he or she is legally eligible for waiver or transfer, but beyond that, in determining whether jurisdiction should be waived or transferred has relevance only in connection with public safety and amenability to treatment, as we have defined it. Whether the child has a mental or physical condition also has relevance only to amenability and possibly public safety; the court must determine, from evidence, what the condition is and whether there is a DJS program that can deal with it better than anything in the adult correctional system. The nature of the crime: if the child is eligible for waiver or transfer, the crime is likely to be either serious or repetitive, which, like age and physical or mental condition, may be relevant to amenability to treatment or public safety and must be considered in that context but has no independent significance.

Id. at 464-65. Additionally, the Court noted:

> If DJS does not have a program competent to address the issues defined that is available to the child and from which the child likely can benefit in a way that will produce better results than anything in the adult system and significantly lessen his danger to the public, a reverse waiver request should be denied . . . .

Id. at 465-66.

In *Rohrbaugh*, this Court examined whether the circuit court abused its discretion in denying a motion to transfer jurisdiction to the juvenile court. 257 Md. App. at 643. Rohrbaugh, at sixteen years old, was charged with first-degree assault, second-degree assault, possession of a firearm, and related offenses, as an adult in two separate circuit court cases. *Id.* Rohrbaugh filed a motion to have his case transferred to juvenile court and requested that the State be required to bear the burden to prove by a preponderance of the evidence that he was not amenable to treatment in the juvenile system. *Id.* at 644. The court denied the burden of proof motion, finding that the statutory language and case law required that, Rohrbaugh, as the moving party, carry the burden. *Id.* at 645.

At the hearing, the court had before it, reports prepared by the Department of Juvenile Services, including a Psychosocial Assessment and a Psychological Evaluation. *Id.* The court analyzed the five factors outlined in Crim. Proc. § 4-202(d) and made "express findings." *Id.* at 647. Ultimately, the court ruled that it was not in the best interest of Rohrbaugh or society to transfer the case, finding that he would likely not benefit from the available DJS programs more than what was available in the adult system, and the transfer would not reduce the likelihood of recidivism or make him a more productive, law-abiding person. *Id.* at 651-52.

Rohrbaugh appealed, arguing that the circuit court erred by putting too much emphasis on the fact that he was only eligible for juvenile services until age 21, by assuming he was guilty of the underlying charges, and in finding that the adult system had programs to treat youthful offenders, even when no evidence was presented at the hearing. *Id.* at 662. This Court, relying on the *Davis* Court's interpretation of the five statutory factors, reiterated that, while the factors must all be considered, "they are necessarily interrelated and, analytically, they all converge on amenability to treatment." *Rohrbaugh*, 257 Md. App. at 662 (quoting *Davis*, 474 Md. at 464). We held that:

> If, on the other hand, there is no program in the juvenile system available to the child that is "competent to address the issues defined" and "from which the child likely can benefit in a way that will produce better results than anything in the adult system and significantly lessen his danger to the public, a reverse waiver request should be denied[.]"

Rohrbaugh, 257 Md. App. at 663 (quoting *Davis*, 474 Md. at 465-66).

This Court explained that although the court made its determination in part on Mr. Rohrbaugh's age, "the court also considered the other four factors." *Id.* at 666. We stated:

> [E]ven if the circuit court had weighed the level of appellant's alleged participation [in the alleged crimes], it would not have erred in doing so. It is difficult, if not impossible, to consider "the nature of the alleged crime," which the court must do, without considering the actions taken by the alleged perpetrators to commit that crime. Thus, we do not interpret that factor in the reverse waiver statute as being completely divorced from consideration of the actions taken by the alleged perpetrators.

Id. at 667 (quoting *Gaines v. State,* 201 Md. App. 1, 14 (2011)).

We then stated:

> As the body responsible for sentencing defendants in the adult system, the court certainly could take judicial notice of programs within that system and about which the court was aware. Moreover, the court, in making those statements, was not suggesting that the programs available through the juvenile system would also be available in the adult system. Rather, the court, in determining that the programs in the juvenile system were insufficient under the circumstances, was merely observing that, in the adult system, there are programs available for youthful offenders such as Mr. Rohrbaugh.

Id. at 667.

We held that the court's analysis was thorough, the appellant's amenability to treatment was properly considered, the court's decision was well-reasoned, and it did not abuse its discretion.

In the present case, the court, prior to its analysis, discussed amenability and its role in examining the statutory factors:

> . . . amenability to treatment has been, let's say, more expansively defined in the *Davis* case, let's agree on that. And it kind of gives you a guide as to what that means, amenability. And some of the things they talk about, willingness to participate, will these programs work? So, when I say these are the things that are on my mind, I am saying, these are the things I have to consider. I think if you... I think you would

have to agree, now you say these facts drive the decision one way, let's say that. You say the facts drive the decision one way. But I think it is the consideration of amenability that is one of the biggest drivers here. So, I am looking for the facts that show he is amenable.

The court, in analyzing the required factors, explained:

(1) the age of the child;
The gentleman is seventeen years old. It puts him, legally makes him a juvenile.

(2) the mental and physical condition of the child;
I think it is well documented, that he has been in foster care, that physically he appears healthy, seems to be healthy, and he has been in foster care.

And there are some mental health needs that were discussed throughout the testimony by the doctors, Dr. Bennett, who I found very impressive. And some of those mental health concerns require treatment.

(3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children;
We will skip the middle one, the amenability, because that is really the spoke.

(4) the nature of the alleged crime;
I don't think there is much argument when it comes to the danger or nature of the offense, I should say, and the community safety aspect.

The offense was . . . appeared to be, it was videotaped . . . and you know, that stuff has to be proven out. But it appears to be a robbery or a meeting in which [Appellant] was brought really as muscle.

Apparently, he has the handgun, brings the handgun, and there's two people assaulted on a public street in broad daylight, really, and shot are fired. One of the shots appeared just to be fired. By the way, this is a townhome/multifamily . . . a mixed use community, but dense, dense. This wasn't in a rural, you know, this wasn't some rural road where there's one or two houses.

(5) the public safety

> So, it was very dangerous actions. The danger was to, one, [Appellant], because if you are involved in any sort of tussle and you have a firearm, something easily can go wrong and you can be hurt.
>
> Two, the named victims in this case, because they were the targets of the firearm, targets of the shooting.
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> And three, I think it was a major danger to the larger community.
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> ***
>
> Now, I think in this case, really the things that jumped out... well, let me say this. And we have to really look at this amenability in light of Davis. If the gentleman goes to Victor Cullen and they have a trauma based program there, is that going to be, or is that going to be significantly better than any programming that he would get in the Division of Corrections?
>
> Here is really where this case turns for me. My information... I went back and listened to it, and I have read through everything. My information is the Victor Cullen program is typically six to nine months long. Some of the witnesses, I will give you Dr. Fleming for example, says that this gentleman would need to be there probably eighteen months, closer to the eighteen months. That is twice the typical program at Victor Cullen.
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> To me, based on the fact that he would need, at best, twice the typical amount of programming at Victor Cullen, that he had been afforded, and by the way, he is doing well in programming now, that he had been afforded programming before and he didn't take advantage of it. And the risk is high if this doesn't go well, because there is really no other place to go. I am going to deny the Defense motion to transfer.

In our view, the court did not err or abuse its discretion in denying Appellant's motion to transfer his case to the juvenile court. The court's analysis properly included a discussion of the required factors under Crim. Proc. § 4-202(d) and the court did not exclude any one factor. The court acknowledged amenability as one of the "biggest drivers" and as a "spoke" in relation to the other factors, and incorporated *Davis* into its analysis. The court acknowledged that Appellant was

doing well in programming, thus satisfying the willingness prong. The court then determined that the juvenile program potentially available at Victor Cullen was the only type of placement that could be made, but that Appellant needed a longer period of treatment and that would be "twice the typical programming at Victor Cullen." The court also had previously acknowledged its awareness of the Youthful Offender Program at Patuxent, the therapeutic aspects of that program and its availability. Ultimately, the court determined that while Appellant was doing well in programs at Cheltenham, there was no available juvenile dispositional programming that could meet his needs. In its review of the factors, the court analyzed public safety and found that Appellant was a major danger to the community. The court viewed the risk as "high if this doesn't go well, because there is really no other place to go."

As *Davis* instructs:

> With an eye both toward the welfare of the child and public safety, which in our view are interrelated, the court needs to make an assessment of whether it is likely that the child would benefit from an available DJS program better than he or she would from anything likely to be available in the adult system and whether that would reduce the likelihood of recidivism and make the child a more productive law-abiding person.

Davis, 474 Md. at 464.

Here, the court did not solely rely on the nature of the offense as an improper factor, did not base its decision on services previously provided in the District of Columbia and did not conclude that receiving no treatment would be better for Appellant than receiving treatment. The court examined the required factors and

determined that a transfer was not appropriate. Under these circumstances, we do not find that its decision was an abuse of discretion as the court's decision was "not well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Cousins v. State*, 231 Md. App. 417, 438 (2017).

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.