Circuit Court for Baltimore County
Case No. C-03-CR-22-004206

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 312

September Term, 2024

TERRON DEMETRIUS HENLEY

v.

STATE OF MARYLAND

Wells, C.J.
Graeff,
Meredith, Timothy E.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Graeff, J.

Filed: August 26, 2025

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

Terron Demetrius Henley, appellant, was charged in the Circuit Court for Baltimore County with 66 counts, including armed robbery, first-degree rape, and home invasion. The alleged offenses involved two separate incidents in a 24-hour period and two unrelated victims. Appellant filed a motion to transfer jurisdiction to juvenile court, which, after a hearing, the court denied. On January 16, 2024, Appellant entered a conditional guilty plea to two counts of first-degree rape and one count of use of a handgun in the commission of a rape. The court sentenced him to 60 years' imprisonment, to be followed by five years of probation.

On appeal, appellant presents the following question for this Court's review, which we have rephrased slightly, as follows:

> Did the circuit court abuse its discretion in denying appellant's motion to transfer jurisdiction to juvenile court?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Events of August 21 and August 22, 2022

At appellant's January 16, 2024 plea hearing, the State set forth the facts in support of the plea. On August 21, 2022, appellant, who had just turned sixteen, accosted Victim 1 as she arrived home at her apartment complex. As Victim 1 opened her door, appellant pointed a handgun at her and forced his way into her apartment. Once inside, appellant demanded money, stole money from Victim 1's dresser, and rummaged through her closet.

While appellant was looking for money, Victim 1's eight-year-old son came out of his bedroom. Victim1 told her son to return to his room and lock the door.

After telling appellant that she had only $50 in cash, he demanded that Victim 1 show him her bank account. He then ordered her to drive him to an ATM to withdraw money. Appellant walked Victim 1, at gunpoint, to her car, got in the back seat, took her phone, and demanded that she drive to an ATM where she withdrew $500.00 and gave it to the appellant. He then forced her to withdraw an additional $1,000.00 from the bank before ordering her to drive to Lakeside Boulevard in Owings Mills to another apartment complex. Once there, appellant directed Victim 1 to get into the back seat of her vehicle with appellant and perform fellatio on him. He then made her to get on top of him and penetrated her with his penis. Appellant alternated between these two forced sexual acts until ejaculating in the back seat of Victim 1's car.[1] Appellant then directed Victim 1 to drive him to the American Legion in Owings Mills, where he exited the car and told Victim 1 to "hurry up and drive away." Victim 1 drove off, and once she was a safe distance away, she pulled over and called 911. She went to the hospital for a Sexual Assault Forensics Exam, where an injury to her vagina was noted.

On August 22, 2022, less than 24 hours after appellant attacked Victim 1, appellant forced Victim 2 into her apartment at gunpoint as she returned home with luggage in her hands. Inside the apartment, appellant demanded cash, but Victim 2 did not have cash. Appellant forced Victim 2 to show him her online bank account. He then ordered Victim

[1] Appellant's DNA was identified in the back seat of Victim 1's car.

2 to take off her clothing. While crying, she asked him if he was going to rape her, and he responded that it was "not considered rape because he [was] a minor." He then pulled down his pants, told her he was "receiving sexual gratification from her fear," and forcibly pushed her head down by her hair and demanded that she perform fellatio at gunpoint. He threatened to kill Victim 2 if she did not comply. Appellant then turned Victim 2 over, but when she begged him not to rape her, he ordered her to again perform fellatio.

After the sexual assault, appellant forced Victim 2 to drive first to the bank to withdraw $500 and then to the 7-Eleven to purchase gift cards with her debit card. Because 7-Eleven was out of gift cards, appellant directed Victim 2 to drive to CVS, where appellant removed the magazine from his handgun and told Victim 2 that there were eight bullets in it, and if she did anything, he would kill her. When appellant went into CVS to purchase the gift cards, Victim 2 fled on foot to a nearby Taco Bell, where someone called the police.

Based on video surveillance, descriptions from the victims, and consultations with the Franklin Precinct Investigation Team, the police identified appellant as the assailant. On August 23, 2022, the police arrested appellant as he was leaving his residence, which was located directly behind the American Legion Hall where he had ordered Victim 1 to drive after he raped and robbed her. Appellant initially denied any involvement in the attacks, but he then admitted that he had engaged in sexual acts with both victims. He alleged, however, that the victims had forced him to engage in the sex acts and that the ATM withdrawals were for payment to him for allowing "the victims to perform on him." Appellant stated that Victim 2 paid him to help her with the luggage she was carrying into

her apartment, and when she fled the vehicle at CVS, he "took her car back to her apartment and left her belongings there."

In a search of the wooded areas outside the American Legion and CVS, the police found discarded gift cards, folded currency, and receipts from CVS, as well as "a loaded nine millimeter handgun with a live round in the chamber and more live rounds in the magazine." The police discovered "a large quantity of marijuana in an amount suff[icient] to indicate distribution and numerous baggies."

II.

Indictment and Motion to Transfer

In a 66-count indictment, the State charged appellant with numerous crimes related to the attacks, including multiple counts of first- and second-degree rape, assault, home invasion, kidnapping, armed robbery, carjacking, unlawful possession of a firearm, and use of a firearm during a crime of violence. On October 12, 2022, appellant filed a Motion to Transfer to Juvenile Court and for Other Appropriate Relief, asserting that transfer of the case to juvenile court was "in the best interests of [appellant] (and) society." Appellant further requested that the court order "a study concerning the child, his family, his environment and other matters relevant to the disposition of the case be made" pursuant to Md. Code Ann., Crim. Proc. ("CP") § 4-202 (Supp. 2024).

On October 17, 2022, the court entered an order directing the Department of Juvenile Justice to conduct a study of appellant, his family, and his environment and to

submit a recommendation to the court regarding transfer of jurisdiction. On January 13, 2023, the Department of Juvenile Services ("DJS") filed the Transfer Summary report.

On June 2, 2023, the court held a hearing on the motion to transfer. Appellant called four witnesses to testify.

A.

Dr. Rubenstein

Dr. Jason Rubenstein, a Psychology Associate for the DJS, performed an assessment of appellant. Dr. Rubenstein had worked as a psychology associate for the DJS for approximately seven and half years and had been involved in "roughly ninety transfer assessments."

Dr. Rubenstein met with appellant at the Baltimore County Detention Center on November 10, 2022, and he spoke with appellant's mother over the telephone after the meeting. Based on his interview with appellant and his mother, test data, and historical data provided to him, Dr. Rubenstein diagnosed appellant with "major depressive disorder with anxious distress, recurrent episode moderate." Appellant had a history of depression, which was confirmed by his mother. He appeared depressed during his meeting with Dr. Rubenstein, and he reported depressive and anxious symptoms. Dr. Rubenstein used the term "anxious distress" because appellant's anxiety was "situational." Appellant's depression and anxiety "happened more than once and on a continuum of mild to severe, his depression seemed moderate."

Dr. Rubenstein was unsure whether appellant took medication for these diagnosed conditions. He explained that major depressive disorders could be treated with talk therapy, medication, or "by time and the change of situation." Dr. Rubenstein did not know whether appellant was receiving any treatment at his current placement, the Hickey School. He did not know how long appellant had suffered from depression, but he did "know from reports that emotional behavioral disturbances had been identified in [appellant] . . . around seven perhaps, maybe a little earlier." Appellant received treatment from Kennedy Kreiger "at a very young age," but the treatment was not long term.

Dr. Rubenstein also diagnosed appellant with "an unspecified bipolar and related disorder." Appellant's mother told Dr. Rubenstein of past reports of a bipolar diagnosis, but Dr. Rubenstein did not remember having "those specific records." Results from appellant's mood disorder questionnaire, "a survey of symptoms representative of a manic or hypomanic episode," indicated that he "endorsed . . . twelve of the thirteen possible items," and appellant told Dr. Rubenstein that these symptoms "caused problems." Dr. Rubenstein was reluctant to diagnose appellant with a specific bipolar disorder, however, because he did not "know the details of the possible manic or hypomanic episode." He recommended that a psychiatrist assess appellant to determine whether treatment for bipolar disorder was appropriate. Dr. Rubenstein testified that appellant's test results were "indicative of the possibility of a bipolar disorder," which could include manic episodes affecting his conduct.

Dr. Rubenstein also diagnosed appellant with moderate attention-deficit/ hyperactivity disorder ("ADHD"). His evaluation "indicated a positive score for hyperactivity." Although appellant's attention deficit symptoms were not clinically measurable, he "appeared inattentive," and therefore, Dr. Rubenstein diagnosed a combined presentation of ADHD.

Appellant's final diagnosis was for "[u]nspecified impulse control and conduct disorder." Dr. Rubenstein explained that appellant did not meet the "full criteria for conduct disorder" because his latest offenses were not within the last six months, but there were historical indications, based on reports from appellant and his mother, of disruptive behavior in school, the community, and at home. Dr. Rubenstein testified that he was aware from the record that appellant was involved in the Choice Program as a result of his probation for two prior arrests for vehicle theft, but he could not speak to the specific treatment the program provided.

Dr. Rubenstein next addressed appellant's social and educational history. He testified that appellant was in an individualized educational program ("IEP") for an emotional disability. The IEP provided guidelines for necessary special education services and goals. Appellant had one close friend, who lived in California and who he met playing video games online, which was appellant's primary entertainment and social outlet.

Appellant's father was incarcerated for most of appellant's childhood, and appellant visited his dad in prison until he was "around six or seven years old." Appellant "noted

that not having a father was impactful on him." Appellant had a close relationship with his mother; he could talk to her, they did things together, and he could lean on her for support.

Appellant reported several traumatic events to Dr. Rubenstein, including "being robbed at gunpoint several times between the ages of thirteen and sixteen." He also reported being beat up in a middle school fight that was posted on social media, which was humiliating.[2] Appellant reported marijuana use, stating that he smoked "three to five blunts daily, both with other people and by himself sometimes." Appellant also reported using "honey," "a liquid Viagra . . . that's for adults only." Appellant reported that he had thoughts of death or suicide over the years, but he had never made plans or attempted to commit suicide. At age nine or ten, however, he told his teacher that he wanted to kill himself and was admitted to Northwest Hospital. He was prescribed Ritalin, but he discontinued it soon after he began taking it.

Dr. Rubenstein next discussed his review of the reports prepared by certified school psychologist Nolita Bowman. He administered to appellant a shorter version of the IQ test given by Ms. Bowman, but the results were similar, showing appellant's IQ in the "borderline range." Appellant's overall evaluation results and his self- report informed the diagnosis of major depressive disorder, ADHD, and possibly bipolar disorder.

Dr. Rubenstein set forth eight treatment recommendations for appellant. Based on the sexual assault charges, Dr. Rubenstein testified that appellant should have a

[2] Dr. Rubenstein acknowledged that appellant reported additional traumatic events to another professional, including witnessing the murder of his cousin, but he stated that appellant did not report these events during their meeting.

"psychosexual assessment to determine if that treatment is appropriate." He stated that appellant would benefit from individual therapy, including a behavior modification component, in a residential treatment center "specifically focused on mental health." Psychiatric medication would help alleviate symptoms of depression, anxiety, inattention, hyperactivity, as well as bipolar disorder, if ultimately diagnosed by a psychiatrist. Given appellant's history of marijuana and other abuse, Dr. Rubenstein recommended substance abuse treatment. He also believed that family therapy could help improve "structures and supports." Dr. Rubenstein's last recommendations were for scholastic services to assist with graduation from high school, a male mentor, and participation in pro-social activities that engaged appellant's interests and created structure.

Dr. Rubenstein stated that, at the time of his evaluation and "by [appellant's] report," appellant's depression, anxiety, and hyperactivity caused him to experience "emotional, behavioral and interpersonal distress that interfere[d] with his ability to function." Appellant experienced social and self-esteem issues, problems with his teachers, and mania that lead to "broad dysfunction in most areas, with the exception" of appellant's relationship with his mother. Dr. Rubenstein forwarded his diagnostic impression and recommendations to the DJS assessment staffing team, of which he was a part.

On cross-examination, Dr. Rubenstein testified that he conducted the "structured assessment of violence risk in youth" without reference to the alleged crimes at issue in appellant's case. Even without consideration of the alleged crimes at issue, Dr. Rubenstein

agreed that, "based on the assessment of all the factors," appellant "tested at high risk for future violence . . . without recommended supports." Dr. Rubenstein further agreed that appellant would need to be amenable to the recommended treatments to lower his risk of violence, and he acknowledged that he did not assess appellant's amenability in his report.

B.

Deidre Steed-Bonse

Deidre Steed-Bonse, a Resource Specialist Supervisor for DJS, had been employed at the agency for 23 years. She was involved in all transfer waiver hearings. In its assessment of waiver cases, the team considers "the alleged offenses, educational needs, mental health needs, risk, family life, prior offenses, [and] involvement with DJS." The evaluating clinician presents his or her findings, observations, and recommendations and the team discusses "what would be the most appropriate services for the youth." Ms. Steed-Bonse stated that the main goal was to determine whether, "based on the youth's needs, based on the youth's history, if DJS has appropriate services for, for the youth under our jurisdiction."

In appellant's case, Dr. Rubenstein was the evaluating clinician, and Natasha Parks was the case manager. The staffing team met on December 1, 2022, to assess appellant's case. The consensus among the staffing team was that DJS could provide appellant with appropriate services, and appellant would be amenable to DJS treatment "based on the fact that he had not received many services through DJS." Based on appellant's treatment needs

and his age, the staffing team "felt that juvenile [services] would be able to best serve his needs."

Ms. Steed-Bonse explained that appellant had received prior DJS services via the Choice Program, which is a mentoring program that checks on kids in school and their employment and takes them to "pro-social activities." DJS had services that would meet appellant's needs, and he would be under the care of DJS until the age of 21. She recommended that appellant be sent to the Chesapeake Treatment Center, Right Moves program, which is a hardware secure residential treatment center.[3] The average stay in the Right Moves program is six to nine months, but it is progress based. Once appellant turned 21, DJS would no longer have jurisdiction over him and would not be able to assist him. Ms. Steed-Bonse testified that, if appellant was amenable, his time under DJS jurisdiction would be sufficient for treatment. She admitted, however, that she did not personally meet appellant and could not say whether he actually wanted treatment.

Appellant's ultimate placement, were he transferred to DJS jurisdiction, would be determined after his adjudication on the charged offenses and a subsequent evaluation based on the final adjudication. In making placement recommendations, DJS considers the offenses charged to determine whether appellant would be excluded from certain programs. A recommendation does not guarantee placement. Placement at a residential treatment center requires a certificate of need based on psychiatric, physical, and psychosocial requirements, and it is prohibited if a defendant is convicted of murder. Ms. Steed-Boone

[3] A hardware secure residential treatment center has a physical fence or barrier.

clarified that, if appellant was convicted of a sex offense, New Direction would be the recommended placement, not the Right Moves program.

Ms. Steed-Boone testified that, despite DJS's previous supervision of appellant for unrelated offenses, appellant was amenable to the current recommended treatment because the services previously provided were limited to mentoring and did not meet his mental health needs. Appellant had not received mental health services since 2014.

C.

Dr. Eric Lane

Dr. Eric Lane, a licensed psychologist and neuropsychologist specializing in psychosexual evaluations, evaluated appellant on December 14, 2022. He prepared a written expert report on January 28, 2023, regarding appellant's transfer to juvenile court.

In his report and testimony, Mr. Lane assessed the five factors courts consider when determining whether transfer to DJS is appropriate. Starting with the age factor, Dr. Lane noted that appellant's age was 16 years, one month, when the alleged offense was committed, 16 years, six months, when Dr. Lane evaluated him, and 16 years, 10 months, at the time of the hearing. The age factor was relevant to whether DJS would have sufficient time to provide the recommended services to appellant, and Dr. Lane testified there was a "lengthy period of time" to treat appellant, as Ms. Steed-Bonse also noted.

With regard to the second factor, physical and mental condition, Dr. Lane noted "nothing remarkable . . . from a physical condition standpoint." Dr. Lane described appellant's history of mental health diagnoses beginning in childhood to the present,

including ADHD, behavioral disorders, and potential major depressive and bipolar disorders. Dr. Lane noted that appellant received outpatient services through the Kennedy Kreiger Institute in 2014, when he was seven, but his conduct escalated into a "pattern of various disruptive, problematic, aggressive behaviors at school," which "remained pretty fixed then over the course of his entire academic trajectory." As a result, the Baltimore County Public Schools placed appellant on an IEP and a behavioral intervention program ("BIP"). Despite these interventions, appellant had been expelled several times, was retained in second grade, and struggled both academically and socially. Appellant was "shunned throughout elementary school," and he did not develop any friendships until middle school. Appellant's social contacts were mostly from the internet. More recently, appellant's psychiatric functioning, mood and behavioral problems, and academic issues had been on a "worsening trajectory."

Appellant's mother reported that she was concerned about his excessive use of the computer and playing of video games, as well as his use of marijuana, which she allowed, hoping it would make him more calm and compliant. Appellant's non-verbal and verbal reasoning scores on the Wexler Adult Intelligence Scale, 4th Edition, measured in the borderline range, at approximately the fourth percentile compared with his peers.

Dr. Lane testified that an understanding of appellant's psychosexual history was "still being learned and developed." The only information he had, aside from the allegations at issue, were based on appellant's self-report. Appellant reported to Dr. Lane that he began to "excessively view internet pornography" at age ten, "watching it like it

was TV." Appellant's compulsive watching of pornography led to a high frequency of masturbation and, at age ten, because of his curiosity from watching pornography, appellant "sought out fellatio from an adult female prostitute in the neighborhood and paid her ten dollars to [do it]." In his twenty-six years of practice conducting thousands of psychosexual evaluations, Dr. Lane did not know whether he had ever encountered a ten-year-old child that had solicited sex from a prostitute. He noted that appellant's hypersexualization from watching pornography may have left him vulnerable to committing sexual assault.

The absence of appellant's father in his life may also have had a significant effect on his behavior. Dr. Lane explained that adverse childhood experiences, "ACE factors," including the absence of an involved parent and exposure to domestic violence, can lead to developmental disruptions, psychiatric and post-traumatic symptomology, and can correlate to future substance abuse and illegal activity. Appellant's mother identified the lack of a male role model as "one of the root causes of [his] chronic anger, emotional dysregulation" and history of problems since childhood. Appellant's mother also reported that appellant had been exposed to intimate partner violence as a child and once pulled a knife out against one of her partners in an attempt to protect her.

During Dr. Lane's evaluation, appellant stated why he thought his case should be transferred to juvenile court. Appellant stated: "[W]e all make mistakes. I've not been in my right state of mind. I know I don't want this. I know I should be punished and I want help. . . . I stopped getting help a long time ago and I still had problems." With regard to

his problems, appellant stated: "My mind . . . it was racing. I don't know." Appellant reported to Dr. Lane that, if he were allowed to return to the community, he would "[g]et a job and play my game. Do things the right way. Think before I do things. Get some medicine to help me think slower." Appellant expressed fear for his safety and stated that that his life would be over if he were to be incarcerated in an adult facility. Appellant agreed to be fully compliant with recommended services and supports, including placement at a hardware secure residential treatment facility, mental health treatment, and sexual offense specific psychotherapy.

Dr. Lane opined that appellant would be amenable to treatment if transferred to DJS. He stated that DJS could offer appellant appropriate services, noting that, although appellant had prior contacts with DJS, the Choice program he was placed in did not provide any outpatient psychiatric psychotherapeutic services, specifically those addressing sexual offenses. Dr. Lane stated that appellant had a positive attitude toward treatment, and appellant indicated that he wanted to participate in the recommended programs. Regarding appellant's response to previous services, Dr. Lane stated that appellant "was close to being successfully discharged from [the Choice] program" at the time the incident occurred, and there had not been a "pattern of problematic or aggressive behaviors over the course of his current detention."[4] Noting that appellant had participated in multiple evaluations and was

[4] Dr. Lane was informed by the State on cross-examination that appellant had an infraction while at his current detention center. Appellant was throwing ice in the dayroom with a few other detainees and did not comply when asked to stop.

engaged in the transfer process, Dr. Lane believed to a reasonable degree of psychological certainty that appellant would be amenable to treatment in a hardware secure facility.

With respect to public safety, Dr. Lane stated that aspects of the alleged crimes "speak to a modus operandi developing" and the "need for the most intensive treatment possible." He agreed with Dr. Rubenstein that appellant posed a high risk for violence in the community and a "very high level, elevated risk for sexual offense recidivism."

Dr. Lane assigned five diagnoses to appellant, including: (1) ADHD, based on observations and appellant's history; (2) unspecified trauma and stressor related disorder;[5] (3) conduct disorder, adolescent onset; (4) cannabis use disorder; and (5) unspecified bipolar and related disorder, based on appellant's racing thought and insomnia. Dr. Lane acknowledged, however, that he did not have a "good sense yet of the cycling pattern of the mood disorder." He recommended that appellant have a thorough evaluation to determine whether a mood stabilizer could relieve his symptoms and reduce his risk to the community.

Dr. Lane made a series of recommendations with regard to appellant's treatment if he was transferred to DJS, including a full psychosexual, psychiatric, and substance abuse evaluation. If adjudicated on the alleged sexual offense, appellant would require placement in New Directions, a hardware secure sex offense treatment center, the highest level of sex offense treatment in the United States, which the Maryland adult detention system did not

[5] Dr. Lane did not believe appellant met the criteria for post-traumatic stress disorder, but appellant was in "the ballpark" due to the worsening trajectory of his conduct.

offer. New Directions offered the most intensive treatment in Maryland and required a certificate of need. It served a "very troubled" population needing the most intensive services available. Dr. Lane was the lead therapist in New Directions when the program opened in 1999, and he thought very highly of the program and its clinicians. He could not "imagine this case without that level of care."[6]

Upon release from New Directions, Dr. Lane recommended that appellant stay at a staff-secure, therapeutic group home, where he would have 24-hour supervision and support, as well as access to the community, including school in certain programs. Appellant would also have ongoing maintenance level sex offense therapy and mental health services. Dr. Lane testified that the adult incarceration system did not provide "trauma informed services [or] a developmentally appropriate course of treatment," and holistic treatment addressing sex offense and psychiatric issues "within a contained environment [wa]s going to be extremely important." Appellant would also be vulnerable to sexual assault himself and weaponization by gangs in an adult detention center, which would make him a higher risk once released.

On cross-examination, Dr. Lane explained that, in 2019, the recidivism rate for juveniles in the New Directions program was fifty percent. He clarified, however, that it was unclear what the recidivism rate was for sexual offenses versus other types of crimes, and he cited a 2016 study by Michael Caldwell showing a 2.4% recidivism rate within a

[6] Dr. Lane noted that, in the past, defendants were treated at New Directions for four or five years, but "that world doesn't exist anymore." Now, the average stay is nine to twelve months.

48-month time period. He also stated that, because he did not know the nationwide base rate for recidivism, he was unsure how New Directions compared to other facilities in that regard. Dr. Lane explained that the risk assessment for adolescents who commit sexual offenses involved contextual risk factors, resiliency factors, and static and dynamic risk factors. Dynamic factors, including unstable psychiatric functioning, and relapse into drug, alcohol, and pornography abuse, have a significant impact on recidivism rates. Defendants in the New Directions program for sexual offenders are the "highest risk already," and therefore, a low recidivism rate there "speaks to the quality of the program."

Dr. Lane discussed whether appellant's statements that he was "just a minor" when he committed one of the sexual offenses would impact his amenability to treatment. He questioned whether demanding fellatio was "anchored by [appellant's] earlier sexual experience" and exposure to internet pornography. He stated: "How that plays into amenability, . . . it's bad. It's extremely serious. . . . Whether or not it factors in at this point in time, nine, ten months later, into his amenability for treatment now, I would think not."

Dr. Lane explained that, without treatment in the juvenile system, appellant's risk to the community upon release in "a couple of decades" would be higher. He testified that early intervention with intensive treatment is the expert-recommended course of action, and he "would follow their lead." He acknowledged that there was no guarantee the New Directions program would accept appellant. In that case, DJS would seek out other programs, including those outside Maryland, with comparable treatment.

D.

James Fleming

James Fleming, a self-employed forensic and clinical psychologist who was accepted as an expert, previously had worked for 21 years in the Youth Program at the Patuxent Institution, a Maryland treatment-oriented corrections facility. He subsequently worked for five years as the director of a part-time outpatient Special Offenders Clinic at the University of Maryland School of Medicine. From 2016 to March 2022, Mr. Fleming contracted with the State to provide treatment to sex offenders in the community through the COMET program.[7]

Mr. Fleming testified that, were appellant adjudicated as an adult, he would be housed, until age 18, at the Patuxent Youth Detention Center in Baltimore City, which provides no mental health treatment services other than medication for psychiatric distress. At age 18, he would have to undergo a six-month evaluation process before being eligible for transfer to a treatment facility, so "best case scenario, if [appellant] is adjudicated as an adult, there's going to be an eighteen month plus delay before he is in any form of treatment at a very developmentally sensitive moment in his life." Mr. Fleming stated that "the cardinal rule with adolescents is to intervene quickly and strongly, as soon as you can and as strongly as you can." Adolescents are still developing until approximately age 25, and appellant would not "be the same person a year from now." Because the prefrontal cortex

[7] COMET stands for the Collaborative Offender Management/Enforced Treatment program.

in adolescents and young adults is not fully developed, they are more impulsive and reckless than adults. To best understand the consequences of their actions, sanctions for improper behavior should be given as quickly as possible.

There was no guarantee that appellant would be accepted for treatment at Patuxent once he turned 18. The rejection rate in recent years had been fifty percent or more, and any misbehavior during the evaluation phase or while in the program could be grounds for exclusion. There were no other programs outside of Patuxent that offered ongoing programming for adult sex offenders, and psycho educational modules and substance abuse treatment would not be available to appellant in the Department of Corrections. Appellant would receive appropriate medication, however, and he would see a medical professional every two or three months for monitoring and evaluation, but there would be no mental health programming available.

Dr. Fleming stated that there was a consensus in the field, including the Association for the Treatment and Prevention of Sexual Assault, that juveniles should not be placed in the adult corrections system, except in rare cases where prior adolescent-based treatments had failed. Because appellant had no previous sex offense charges or treatment, he would not be the exception and should not be treated as an adult. Based on a study by Dr. Richard Redding cited in Dr. Fleming's report, Dr. Fleming believed that appellant would be more vulnerable to recidivism if he were adjudicated as an adult.

Dr. Fleming testified that New Directions would better serve appellant's needs than the Patuxent sex offender program because appellant would have earlier access to treatment

and New Directions offers more comprehensive and intensive services. Patuxent's treatment program was limited to two to three groups per week, a home group, sex offender treatment module, and, in some cases, a psycho educational module. Dr. Fleming also noted that all staff members at New Directions were trained to work with juveniles and to give trauma informed care. Patuxent, on the other hand, had only recently implemented the trauma informed care model. The corrections officers there had not been trained in that method of responding to offenders, and they did not communicate regularly with the treatment team.

On cross-examination, Dr. Fleming acknowledged that he had not interviewed appellant prior to preparing his report. He also noted that his report did not distinguish between violent and other juvenile sex offenders. Because he did not interview appellant, Dr. Fleming could not assess appellant's amenability to treatment. At the close of testimony, counsel introduced into evidence a letter appellant wrote to the court. In the letter, appellant stated that he wanted to get help to stay on track, graduate from high school, and attend college to study computer science. He also expressed concerns about his life safety.

The State did not present any evidence or witnesses.

E.

Arguments of Counsel

Appellant's counsel argued that, despite the serious nature of the charges, the "essential inquiry . . . should be whether the child is amenable to treatment." Counsel

asserted that appellant acknowledged responsibility for his actions and wanted treatment, which was available through DJS and would reduce the likelihood of recidivism. All the witnesses who testified on appellant's behalf believed that appellant was willing to be treated and that the most appropriate intensive treatment programs were not available in the adult system.

The State began its argument by noting that it was appellant's burden to prove that he should be transferred to the juvenile system. It then described the specific facts of the two offenses in detail. The State alleged that appellant was using the juvenile justice system as a shield and that his actions showed he was not amenable to treatment. Instead of taking responsibility for his actions, appellant blamed the victims, lied, denied any culpability, and minimized his actions.

The State also noted that, although appellant was under only two orders of probation for delinquent findings at the time of the offenses, he actually had six juvenile contacts prior to the events at issue. Prior charges included a hit and run and malicious destruction of property involving a stolen vehicle, two charges of unlawful taking of a motor vehicle, theft, motor vehicle theft, and forgery. Appellant also was found guilty of an infraction at the Baltimore County Detention Center for failing to comply with a correctional officer order, requiring the intervention of a tactical team.

The State argued that appellant was in the Choice Program at the time of the offenses, and "[a]fter going through that six-month treatment and service," his behavior actually escalated and was "far worse" than it was prior to the program. It noted that there

was no guarantee appellant would get a placement in the New Directions treatment center, and at most, he would receive nine to twelve months of treatment for the "heinous and horrendous crimes" at issue and still have a fifty percent chance at re-offending. It also noted appellant's history of non-compliance with medications and academic and behavioral interventions, as well as his inability to submit to authority, as evidence that he was not amendable to treatment. Finally, the State emphasized that the extremely serious charges, involving stranger rape at gunpoint and home invasion, were not the type typically addressed in a juvenile facility. Because appellant's actions were calculated and well planned, did not involve the influence of others, and showed a "lack of regard for human beings," public safety, and the juvenile justice system, the State asked that he be kept in adult court.

F.

Court's Ruling

After argument from counsel, the court issued its decision. The court noted that, under *Davis v. State*, 474 Md. 439 (2021), the court's focus was on amenability to treatment. The court then analyzed the five requisite factors "through the lens of factor three, which is the amenability of the child to treatment."

Starting with the first factor, age, the court noted that appellant was 16 and one month at the time of the alleged offense, he would be 17 in July, and he would be subject to DJS jurisdiction until age 21. DJS would have four years to work with appellant. With regard to factor two, appellant's mental and physical condition, appellant was five feet six

inches tall, 170 pounds, and he had several mental health conditions, including major depressive disorder moderate and situational anxiety. The court noted that appellant had been treated for psychiatric issues at Kennedy Kreiger at age six or seven, and he had a history of disruptive and aggressive behavior at school, which were addressed by placing him on an IEP and BIP at school. The court noted the doctor's testimony that appellant "could certainly benefit from mental health treatment," and he was much more likely to receive such treatment in the juvenile system.

The court next addressed factor four, the nature of the crime, explaining that it would address factor three, amenability, as "the primary overarching factor at the end." The court stated that, outside of a murder case, the facts in this case were "one of the most horrific" it had heard, noting that it was not "a childish crime" involving impulse, opportunity, or the bad influence of a group of friends. Rather, the offenses were calculated, premediated, and violent. The court noted that the robberies and sexual assault were at gunpoint, and "[y]ou don't load your gun" or "seek out a [victim] who doesn't even live in your building on impulse." It stated that appellant's plan to rob the victims had contingencies, that he threated to kill others if the victim tried to run or seek help, and appellant planned ahead to get away without being caught. Instead of being remorseful for what he did to the first victim, appellant "react[ed] by going out and doing it again the next day."

Regarding the fifth factor, public safety, the court found that, based on the expert testimony, appellant had a high likelihood of sexual offense recidivism and violence in the community that would only increase without treatment. Appellant's risk for future

violence was considered high, even "without considering the facts of this case." The court concluded that community public safety was clearly an issue.

The court then addressed the "paramount consideration" of amenability to treatment, i.e., "would the child benefit from DJS programs more than programs in the adult system? And if so, will the likelihood of recidivism decrease?" Based on the evidence and the other four factors, the court found a worsening trajectory in appellant's behavior. The court explained that appellant's mother and the school attempted early interventions to address his behavior, but treatment at Kennedy Kreiger and special programs provided by the school system did not "seem[ ] to really matter." The court noted that appellant was in the Choice program, which provided monitoring and mentoring, at the time of the two offenses.

The court found, based on the evidence, appellant's letter to the court, and his interviews with the evaluators, that appellant stated that he wanted help because he was scared. The court was "not confident," however, that appellant would participate in treatment were he transferred to the juvenile system, noting that he did not avail himself of the Choice program or opportunities to get help through school. The court further found:

> [W]hen you look at the alleged facts . . . of these offenses, this is not someone suffering from such crippling mental health conditions that they can't function. This is a . . . cold and calculated assessment that required planning and it happened more than once within that twenty-four-hour period. So, given the recidivism rates . . . the risk of re-offense is high, no matter what happens. I think it . . . would be made higher if I took a chance and sent [appellant] back to DJS because I don't believe that the mental health disorders and the other struggles that [appellant] had are what . . . has ca[used] this escalation.

> There have been plenty of chances for intervention, both by the family and DJS and community safety was in peril at every turn. Because [appellant] wasn't amenable to the treatment. He wasn't amenable to the interventions. And therefore, this . . . overarching amenability factor, he was under two orders of probation at the time of . . . these events.
>
> And, as I heard today, [appellant's] success in the juvenile system, a hundred percent depends on [appellant]. And . . . I'm not convinced that he is amenable to the treatment . . . [or] that he would be less likely to re-offend if waived to the juvenile system.

The court denied appellant's motion to waive.

III.

Guilty Plea

On January 16, 2024, appellant entered a conditional guilty plea to three of the 66 counts in the indictment: first-degree rape of the first victim, use of a handgun in the commission of the rape of the first victim, and first-degree rape of the second victim. Appellant reserved the right to appeal the denial of his request to transfer this matter to juvenile court.

This appeal followed.

DISCUSSION

Appellant contends that the circuit court abused its discretion in denying his motion to transfer jurisdiction to juvenile court. He argues that the court denied his motion to transfer based on the "nature of the alleged crime" factor, finding that appellant's crime was "too heinous" for transfer to juvenile court, despite expert testimony showing that he "could be rehabilitated with intensive psychological treatment." Appellant argues that the court "did not properly apply the relevant statutory standard of review" or "properly apply

the factors used to assess" the transfer request, and because appellant showed by a preponderance of the evidence that he is amenable to treatment, the court abused its discretion in denying his motion.

The State contends that the court properly exercised its discretion in denying the motion to transfer. It argues that the court appropriately analyzed the five statutory factors to determine that transfer was not in the best interests of appellant or society, and its finding that appellant was not amenable to treatment in the juvenile system was not unreasonable.

I.

Statutory Background and Relevant Authority

Before addressing appellant's claim, we will discuss the statutory scheme regarding jurisdiction over juveniles who commit crimes. With some limitations, the juvenile court has exclusive original jurisdiction over "[a] child who is alleged to be delinquent or in need of supervision or who has received a citation for a violation." Md. Code Ann., Cts. & Jud. Proc. ("CJ") § 3-8A-03(a)(1) (2024 Supp.). The juvenile court does not have jurisdiction, however, over a child at least 14 years old who is alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment. § 3-8A-03(d)(1). First degree rape is punishable by life imprisonment. Md. Code Ann., Crim. Law ("CR") § 3-303(d)(1) (2021 Repl. Vol.). The juvenile court also does not have jurisdiction over a child who is at least 16 years old and is alleged to have committed specified crimes, including kidnapping, robbery, first-degree assault, second-degree rape,

and certain firearms offenses. CJ § 3-8A-03(d)(4). In these cases, original jurisdiction over the child "lies in the adult court." *Rohrbaugh v. State*, 257 Md. App. 638, 654 (2023).

In cases where a child is charged with an offense over which the circuit court has original jurisdiction, the statute provides that the defendant may request that the circuit court waive its jurisdiction and transfer the case to juvenile court pursuant to § 4-202 of the Criminal Procedure Article. CP § 4-202(b). A transfer from circuit court to juvenile court is known as a "reverse waiver." *Rohrbaugh*, 257 Md. App. at 654. Reverse waiver or transfer to juvenile court may be granted if the court, after weighing statutorily prescribed factors, "determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society." CP § 4-202(b)(3).

The court must consider the following five factors in determining whether to grant a motion to transfer jurisdiction to juvenile court:

> (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.

Id. § 4-202 (d). "[T]he juvenile bears the burden of persuasion at a reverse waiver hearing." *Rohrbaugh*, 257 Md. App. at 655. We review a court's decision on a motion for transfer to juvenile court for an abuse of discretion. *Id.* at 662.

The Supreme Court of Maryland has explained that the five statutory factors "are not in competition with one another," and although a court must consider all the factors, "they are necessarily interrelated and, analytically, they all converge on amenability to treatment." *Davis*, 474 Md. at 465. It stated that

> [w]ith an eye both toward the welfare of the child and public safety . . . 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.

Id. at 464. Accordingly, even if "the child currently represents a danger to public safety," if there is a program "that can provide immediate safety to the public and make recidivism less likely . . . absent some other circumstance, the child should be transferred to . . . the juvenile system." *Id.* at 465. Conversely, if the child is not likely to benefit from a program in the juvenile system "that will produce better results than . . . the adult system and significantly lessen his danger to the public," a motion to transfer should be denied. *Id.*

II.

Analysis

Appellant contends that the court failed to properly apply the requisite factors, and instead, it improperly focused on "the nature of the alleged crime," finding that the alleged crime was just "too heinous to allow him to be treated as a child." We disagree.

Our review of the record confirms that the court carefully considered all the requisite factors, with a focus on amenability. At the outset of its discussion, the court explained that, as instructed by *Davis*, it would analyze all the of the factors "through the lens of

factor three, which is the amenability of the child to treatment." In its concluding discussion and ultimate ruling, the court noted that amenability was "the paramount consideration pursuant to the *Davis* decision."

Addressing each factor, the court started with factor one, age, and it found that appellant was 16 and one month at the time of the offense, he would be 17 in the next month, and DJS would have 4 years to work with appellant before he turned 21 and would be released. With regard to appellant's mental and physical health, the court found that appellant had psychiatric and behavioral issues starting when he was six or seven years old, and he had received treatment at an early age at Kennedy Kreiger. The court noted that appellant was afforded interventions at school in the form of an IEP and BIP, and he "could certainly benefit from mental health treatment," which he was much more likely to receive in the juvenile system.

Regarding the third factor, the nature of alleged crime, the court accurately characterized the crimes as "horrific." The court then focused on the fact that the crimes were not a "childish crime . . . of impulse," but rather, the two separate crimes were financial and sexual, and they involved planning; appellant obtained a gun, robbed his victims, and took them to ATM machines and to purchase gift cards.

On the issue of public safety, the court found that the likelihood of re-offense was very high, and appellant posed "a high risk of violence in the community" and "sexual offense recidivism without the services." It also stated that, without services, the risk of reoffending will increase. In concluding that public safety was clearly an issue, the court

again noted that appellant would be subject to DJS jurisdiction only until age 21, approximately four years.

The court's primary reason for denying the waiver motion was the third factor, the "paramount consideration" of amenability to treatment, and its determination that appellant was not amenable to treatment. The court noted that, despite earlier interventions through school and at Kennedy Krieger, "none of that seemed to really matter," and there had been a worsening trajectory in appellant's behavior at home and at school.

Although appellant stated that he wanted help, the court found that appellant "wants help now because he's scared." It was not confident that appellant would participate in any treatment programs in the juvenile system because he did not "avail himself of the Choice Program" or school interventions. It noted DJS testimony that it could help appellant *only if he wanted help* and that success in the juvenile system "a hundred percent depend[ed] on [him]." The court noted that appellant had been offered help before, and he had chosen to not accept it.

The court was well within its discretion to discredit appellant's statement that he was now ready for help. *Nouri v. Dadgar*, 245 Md. App. 324, 342 (2020) (credibility determinations are for the fact finder). Although there was expert testimony that appellant would be amenable to treatment, the court was free to disregard that testimony. *See Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 452 (2012) ("Here, as the trier of fact, the circuit court was free to disregard expert testimony and weigh the evidence in coming to a conclusion."); *Edsall v. Huffaker*, 159 Md. App. 337, 343 (2004) (trier of

fact was free to accept or reject all or any part of witnesses' testimony or expert reports), *cert. denied*, 387 Md. 122 (2005).[8]

After a review of the record, it is clear that the court carefully and thoroughly examined each of the five factors in determining that transfer to the juvenile system was not warranted. The court did not abuse its discretion denying the motion to transfer.

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

[8] We note that, of the four witnesses who testified on behalf of appellant, only two, Drs. Rubenstein and Lane, actually met with appellant prior to issuing their reports. Ms. Steed-Bonse and Dr. Fleming conceded that they could not assess appellant's amenability to treatment because they had not personally met him.