Circuit Court for Dorchester County
Case No. C-09-CR-22-114

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1664

September Term, 2022

MARQUISE OMAR WILLIAMS

v.

STATE OF MARYLAND

Leahy,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: September 21, 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,[1] a minor, was arrested following an incident in which Appellant struck an individual, C.G., with a loaded handgun, causing the gun to discharge a bullet that struck another individual, K.H. Appellant was subsequently charged, in the Circuit Court for Dorchester County, as an adult with first-degree assault against C.G., first-degree assault against K.H., second-degree assault against K.H., use of a firearm in a crime of violence against C.G., and related charges. Appellant thereafter filed a motion to have the charges transferred to the juvenile court. Following a hearing, the circuit court denied the motion. Appellant elected a bench trial and pleaded not guilty pursuant to an agreed statement of facts. The court subsequently convicted Appellant on both charges of first-degree assault, the charge of second-degree assault, and the charge of use of a handgun in a crime of violence. The State dismissed the remaining charges. The court sentenced Appellant to a total term of 40 years' imprisonment, with all but 13 years suspended.[2]

In this appeal, Appellant presents two questions for our review:

1. Did the circuit court abuse its discretion in denying the motion to transfer jurisdiction to the juvenile court?

2. Was the evidence adduced at trial sufficient to sustain the convictions for first and second-degree assault against K.H.?

[1] Due to the age of the Appellant, who is yet a minor, we refer to him as "Appellant," rather than by his name. We do not mean any disrespect to the Appellant, the victims, or any other individual involved in this case.

[2] Appellant received: for first-degree assault against K.H. (Count 1), 25 years, with 12 years suspended; for his first-degree assault against C.G. (Count 2), 15 years, all suspended; and for his handgun use conviction (Count 9), 20 years, with 15 years suspended. The sentences for Counts 1 and 2 are consecutive; the sentence for Count 3 is concurrent to the others. Appellant's second-degree assault conviction against C.G. (Count 3) was merged for the purpose of sentencing.

For the reasons to follow, we hold that the circuit court did not abuse its discretion in declining Appellant's transfer motion. We also hold that the evidence was sufficient to sustain Appellant's convictions. Accordingly, we affirm the court's judgments.

BACKGROUND

On March 20, 2022, C.G. was walking along the 500 block of Clinton Street in Dorchester County when he was accosted by Appellant, who proceeded to strike C.G. in the face with a loaded firearm, causing the firearm to discharge a bullet, which struck a seven-year-old bystander, K.H. Appellant, who was sixteen years old at the time of the crime, was ultimately arrested and charged as an adult in the circuit court.[3]

Upon being charged, Appellant moved to have his charges transferred to the juvenile court pursuant to § 4-202 of the Criminal Procedure Article ("CP") of the Maryland Code. That statute states, in pertinent part, that a circuit court may transfer a case involving a child to the juvenile court if "the court 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 statute states further that, in making a transfer determination, the court must 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

[3] Ordinarily, the juvenile court has exclusive jurisdiction over a child alleged to have committed a crime. Md. Code, Cts. & Jud. Proc. § 3-8A-03(a). Where, however, a child is at least 16 years old and is alleged to have committed certain enumerated crimes, the juvenile court is divested of jurisdiction, and charges must be brought in the circuit court. Md. Code, Cts. & Jud. Proc. § 3-8A-03(d). It is undisputed that the charged crimes in the instant case were properly brought in the circuit court.

available to delinquent children; (4) the nature of the alleged crime; and (5) the public safety." CP § 4-202(d).

Transfer Hearing

On September 1, 2022, the circuit court held a hearing on the Appellant's transfer motion. At that hearing, the court heard testimony from the following witnesses: Natalee Tubman, a case management specialist with the Maryland Department of Juvenile Services ("DJS"); Tina Williams, a case management supervisor with DJS; Dr. Marissa Kaplan, an expert in clinical psychology; Chris Flynn, a Detective Sergeant with the Cambridge Police Department; and E.H., the father of K.H. The court also received into evidence the following reports: a "Transfer Investigation Report" compiled by DJS, a psychological evaluation compiled by Dr. Kaplan, and an incident report compiled by the Cambridge Police Department.

Per that evidence, Appellant was born on December 1, 2005. He was just over sixteen years old when the charged crimes occurred and nearly seventeen years old at the time of the transfer hearing. At the time of the offense, Appellant was in ninth grade, where he had been socially promoted after having twice failed the eighth grade. During the 2019-20 school year, Appellant received 10 out-of-school suspensions for infractions involving physical altercations, throwing food in the cafeteria, leaving class, and making threats. Appellant's school records indicate a history of poor attendance, failing grades, and behavioral infractions.

Appellant was of average height and weight and had no notable issues with his physical health. Appellant's mother used alcohol, tobacco, and marijuana when she was pregnant with Appellant, and Appellant was subsequently born premature and underweight. Shortly after his birth, Appellant was diagnosed with Respiratory Syncytial Virus and was airlifted to the hospital for treatment. Appellant began walking and talking later than normal.

When he was in elementary school, Appellant was psychiatrically hospitalized due to "suicidal ideation." In 2018, Appellant was diagnosed with ADHD, Disruptive Mood Dysregulation Disorder, Unspecified Trauma or Stressor-Related Disorder, Conduct Disorder, and Cannabis Use Disorder. In 2021, Appellant was diagnosed with ADHD, Disruptive Mood Dysregulation Disorder, Intermittent Explosive Disorder, and Conduct Disorder. In 2022, Appellant was diagnosed with ADHD, Disruptive Mood Dysregulation Disorder, Posttraumatic Stress Disorder,[4] Conduct Disorder, and "Problems Related to Other Legal Circumstances." Appellant was prescribed various medications and enrolled in therapy to treat his mental health issues. Appellant's treatment was "sporadic" in the years prior to being charged. Appellant "often missed therapy appointments, but normally made his psychiatric appointments." Appellant was also referred to substance abuse services "but did not follow through with keeping appointments."

[4] As we discuss below, the circuit court was not convinced of the accuracy of this diagnosis.

Appellant reported to DJS and his various therapists that he had suffered significant trauma prior to being charged. That trauma included being shot at three times, being "jumped" by one or more individuals multiple times, being threatened at home and at school by multiple individuals, and experiencing the deaths of several friends. Natalee Tubman, Appellant's DJS caseworker, testified that virtually all of Appellant's trauma was self-reported and that none of the reported incidents could be independently confirmed.

Appellant had significant prior involvement in the juvenile justice system. Since November 2017, Appellant had been referred to DJS eight times and had been adjudicated delinquent four times. Four of those referrals involved allegations of assault. Over that same period, Appellant received myriad services and placements through DJS, including secure detention (six times), community detention (two times), electronic monitoring (eight times), and community-based rehabilitation (three times). In addition, Appellant was placed at Woodbourne Center, a residential treatment facility, for nearly one year. During his placement there, Appellant was "initially resistant to treatment and was involved in a total of 13 fights within the first six months of treatment." Appellant was also "involved in therapy during his entire stay in treatment but had difficulty transitioning what he was working on in therapy to his day to day life."

Natalee Tubman testified that she had been Appellant's caseworker since 2020. She testified that, during that time, Appellant had been in detention at least twice, in addition to his placement at Woodbourne Center. Ms. Tubman stated that Appellant had

received medication management and therapeutic services through Marshy Hope Family Services. According to the records from Marshy Hope, Appellant was scheduled for ten appointments, but he cancelled one and failed to show up for five others. Ms. Tubman testified that DJS's jurisdiction over Appellant would normally expire when he turned 18, but, if he were placed in a program, DJS could continue providing services until age 21. Ms. Tubman testified that, in the approximately three years that Appellant was under her supervision, DJS had tried its best to identify and provide the services Appellant needed.

Tina Williams, a DJS supervisor, testified that DJS reviewed Appellant's case and determined that, if Appellant's case were transferred to the juvenile court, he should be in a "staff secure" placement at one of DJS's youth centers.[5] DJS also determined that Appellant could benefit from individual psychotherapy, psychiatric medication, ongoing educational support, and engagement in pro-social activities. Tina Williams testified that the youth centers offer those services. She acknowledged, however, that a residential treatment center, such as Woodbourne Center, is generally "more therapeutic" than the youth centers where Appellant would likely be placed if his case were transferred to the juvenile court. She also acknowledged that Appellant, by way of his placement at Woodbourne Center, had already completed a more therapeutic program than what DJS would provide at a youth center.

[5] According to Ms. Williams, "staff secure" places include Backbone Mountain Youth Center and Green Ridge Youth Center. In addition, Ms. Williams testified, DJS may place a juvenile in a "hardware secure" facility, such as Victor Cullen Center. Ms. Williams further stated that "if all in-state placements have been exhausted, then [DJS] look[s] to send kids out of state." Whether the trial judge failed to consider other placement options for Appellant is not an issue in this appeal.

Dr. Marissa Kaplan was called by Appellant to testify as an expert in clinical psychology. Dr. Kaplan testified that she conducted a psychological evaluation of Appellant and prepared a report, which was admitted into evidence. According to Dr. Kaplan, Appellant had a "long-documented history of trauma, environmental instability, and ensuing psychological issues" and had "significant problems controlling his anger and behavior." Dr. Kaplan diagnosed Appellant with ADHD and Disruptive Mood Dysregulation Disorder. Dr. Kaplan considered Appellant to be "a moderate to high risk of engaging in future violence without receiving appropriate interventions and treatment." She indicated that Appellant was "very emotionally immature for his age[,]" which was "a big issue with juveniles who remain in the adult system" because "they're easily influenced by older, fully formed adults." Dr. Kaplan also described Appellant as "self-assured, confident, and dominant," noting that he "prefers to interact with others in situations over which he can exercise some measure of control."

Dr. Kaplan opined that Appellant "would be better served in the juvenile system versus the adult judiciary system." She added that Appellant "fits the typical profile of the normally developing adolescent who lacks the ability to make responsible decisions due to limited brain development, underdeveloped cognitive abilities, immaturity, as well as other variables, such as impulsivity and peer influences." Dr. Kaplan recommended that Appellant receive individual psychotherapy, psychiatric therapy, behavioral therapy, a special education evaluation, and mentoring services. She noted that all of those services were available in the juvenile system and were tailored to Appellant's needs. She

added that she was aware of only one adult program that included a therapeutic component, and that component was limited to group therapy. Dr. Kaplan explained that Appellant would be much better served by a regiment that included individual therapy because a significant portion of Appellant's mental-health issues were trauma-based, and group therapy could "exacerbate the problem[.]"

Cambridge Police Sergeant Chris Flynn testified that he was one of the officers who responded to the scene of the shooting on March 20, 2022. He stated that a police report was subsequently compiled regarding the incident. That report was admitted into evidence.

Circuit Court's Ruling

In the end, the circuit court denied Appellant's transfer motion and explained its decision in detail. In so doing, the court expressly recognized the five factors set forth in CP § 4-202 and the importance of considering those factors with an eye toward a juvenile's amenability to treatment, as indicated by the Supreme Court of Maryland in *Davis v. State*, 474 Md. 439 (2021). The court then went through the five factors and made specific findings as to each factor.

As to Appellant's age, the court observed that he was sixteen years old, which meant that treatment programs would be available to him through DJS for another four or five years. The court noted, however, that Appellant had been receiving such services since November 2017 and "now finds himself charged with a violent crime." The court concluded that it was "unlikely that his age makes him more amenable to treatment" or "that additional treatment of services from DJS would increase public safety."

As to Appellant's mental and physical condition, the court observed that he had, at one time or another, been diagnosed with a variety of mental-health issues, including ADHD, disruptive mood dysregulation disorder, intermittent explosive disorder, unspecified trauma or stress-related disorder, conduct disorder, and cannabis use disorder. The court concluded that there was "no evidence to suggest that a DJS program can deal with [Appellant's] mental health better than anything in the adult correctional system." The court found, rather, that there was "ample evidence to suggest the opposite." The court noted that, when Appellant was placed at Woodbourne Center between December 2018 and November 2019, he was involved in 13 fights in the first six months of treatment and later had difficulty applying his lessons in therapy to his daily life.

As to the nature of the offense, the court observed that, while Appellant was charged with serious offenses, the seriousness of the offenses had "no independent significance." The court concluded that that factor did not weigh for or against Appellant's transfer request.

As to Appellant's amenability to treatment, the court noted that it had heard testimony regarding the services and programs that would be available to Appellant in the juvenile system and the adult system. Based on that evidence, the court was "not convinced that the services at DJS would provide a better benefit than anything available in the adult system." The court noted that Patuxent Institution, the adult facility where the Appellant could go if convicted in adult court, specialized in serving inmates who have

mental health issues and had several programs geared towards mental health wellbeing. The court further noted that, although there was some discussion about the benefits of individual versus group therapy for trauma sufferers, the evidence of trauma in Appellant's case was "scant." The court explained that Appellant's various mental-health evaluations were based on "self-reporting information" and that there were variations among the different diagnoses. The court reiterated that Appellant could participate in programs and receive treatment in the adult system, and the court stated again that it was not convinced that the juvenile programs would be more effective given that Appellant had received extensive services and was now being charged with a violent crime. The court declared that the word "amenability," as set forth in *Davis*, "can be defined as acknowledging authority, ready and willing to submit, suitable for a particular type of treatment, open to influence, agreeable and submissive." *See* 474 Md. at 463 (citing dictionary definitions of "amenable"). The court concluded that, based on the evidence, Appellant did not meet that definition. The court noted that Dr. Kaplan even described Appellant "as being dominant."

As to public safety, the court again observed that the treatment Appellant had received in the juvenile system had not significantly decreased his danger to the public. The court noted that one of the key questions was whether the juvenile system had a program that could benefit Appellant "in a way that will produce better results than anything in the adult system and significantly lessen his danger to the public[.]" The

court explained that it was not convinced, based on the evidence presented, that such a program existed in Appellant's case.

Ultimately, the court concluded: "From the evidence before the [c]ourt, the [c]ourt is not convinced that there is a program available at DJS that would produce a better result than a program in the adult system and significantly lessen [Appellant's] danger to the public." The court found, therefore, that a transfer to the juvenile court was inappropriate.

Not Guilty Agreed Statement of Facts

Appellant thereafter waived his right to a jury trial and elected a bench trial, where he pleaded not guilty pursuant to an agreed statement of facts. The statement of facts was read into the record, and the pertinent portions were as follows:

> [O]n March 20, 2022, at approximately 4:52 in the 500 block of Clinton Street, . . . police responded to a call for a child with a gunshot wound to the head. Upon arrival they found a seven-year-old bleeding from a gunshot wound to his head. The victim was identified as [K.H.] [K.H.] was then flown to Johns Hopkins. An update from Johns Hopkins revealed that [K.H.] had a two-inch laceration from a gunshot wound on the top of his head. The bullet grazed his head, a major vein, and fractured his skull. He was placed in a medically induced coma with a 50 percent chance of survival.
>
> The investigation revealed that [K.H.] was walking with his family members and his sister's boyfriend when the incident occurred. . . . While walking the 500 block of Clinton Street, a black male rode by on his bike. Several witnesses identified this individual as [Appellant.] . . . [Appellant] rode by on his bike, witnesses would testify he quickly gets off the bike, pulls out a gun, and then several witnesses stated he "cocked the gun" and then struck [C.G.] in the face with the gun. As he struck [C.G.] in the face with the gun, the gun fired, striking [K.H.] in the head. [C.G.] indicated that when he was hit with the gun, the gun was pointed . . . in the direction of where [K.H.] was standing, which was next to [C.G.] The witnesses stated that [Appellant] then fled the scene on his bicycle.

* * *

> . . . The police responded to [Appellant's] home and recovered a loaded Springfield XD 9 millimeter handgun, with a spent casing lodged in the firing chamber, causing the slide of the weapon to not fully return. The handgun was subsequently swabbed for DNA and contained [Appellant's] DNA on the trigger.

* * *

> . . . Sergeant Flynn was noted as an expert and would have been called as an expert in firearms. He would have testified that the gun recovered from [Appellant's] home contains many safety features. He would have testified that it is basically impossible for the gun to just go off. This is because the gun has an indicator that indicates when the gun is loaded, a striker indicator cocked that indicates when the firing pin is in the ready to fire position. A magazine release button to indicate whether the magazine is loaded, a grip safety and a trigger safety.
>
> Sergeant Flynn would testify the trigger safety requires the trigger to be compressed hard at the same time as the grip safety . . . is compressed in order for the gun to fire.
>
> The firearm was test fired, found to be operable, and meets the statutory definition of a handgun.
>
> The State agrees it cannot get into [Appellant's] mind at the time of the shooting and there's a factual way the gun could have discharged without him consciously pulling the trigger.

Based on those facts, the trial court found Appellant guilty of first-degree assault against C.G., first-degree assault against K.H., second-degree assault against K.H., and use of a firearm in a crime of violence against C.G. In reaching its verdict on the charges of first and second-degree assault against K.H., the court noted that the State had to show, among other things, that Appellant either intentionally or recklessly caused offensive

physical contact to K.H. The court found that the State had proven beyond a reasonable doubt that Appellant's conduct was reckless:

> According to the agreed statement of facts, [Appellant] attempted to assault, as I described, the primary victim, if you will, and he did so with a firearm. He prepared himself to commit that assault with a firearm, he didn't just suddenly have a gun handed to him, he presumably appeared with one that he had brought with him. And there are two particular parts of the statement of facts that the Court finds to be most helpful and relevant. First is the existence of the three safety features, that according to the State's expert and how he would have testified, is that they would have to have been engaged or disengaged, depended on your terminology, in preparation of firing that firearm.
>
> But perhaps more important in this Court's mind is the witnesses' description of him cocking the gun or that he cocked the gun. Which certainly would suggest not only preparation, but consciousness of the use of a firearm and its ability to be used as a firearm. One does not cock a gun for any reason other than to prepare for firing or discharging that firearm. And for that reason, this Court finds that there was consciousness on the part of [Appellant] in taking the gun and engaging or disengaging the safety features.
>
> And most importantly, just prior to the assault, with a gun pointed ultimately towards the victim, cocking the gun such that there is, in [t]his Court's mind, no way he did not know and was not aware of the risk of harm that he was engaged in. And for that reason, the Court believes that the reckless part of the . . . assault element and jury instruction is satisfied.

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

I.

Parties' contentions

Appellant contends that the circuit court abused its discretion in denying his motion to transfer his case to the juvenile court. He argues that the court failed to

meaningfully assess his amenability to treatment "by improperly weighing his age in connection with public safety and his amenability, by casting aside evidence of his mental and physical condition, and by placing too much emphasis on [his] past interactions with the juvenile system." Appellant contends that the court also disregarded and distorted certain credible evidence, namely, Dr. Kaplan's testimony, that supported his transfer motion.

The State argues that the court soundly exercised its discretion in denying Appellant's motion. The State contends that the court properly considered all the statutory factors and gave due weight to all the evidence.

Standard of Review

We review the circuit court's decision for abuse of discretion. *Rohrbaugh v. State*, 257 Md. App. 638, 662 (2023). "[A]n abuse of discretion occurs when the court acts without reference to any guiding rules or principles, where no reasonable person would take the view adopted by the court, or where the ruling is clearly against the logic and effect of facts and inferences before the court." *Brown v. State*, 470 Md. 503, 553 (2020) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)) (internal quotations omitted).

Analysis

As noted, if charges are brought against a child in circuit court pursuant to CP § 4-202, the circuit court may transfer the case to the juvenile court if "the court 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 juvenile bears the burden of proof on such a

motion. *Rohrbaugh*, 257 Md. App. at 661. In determining the merits of the motion, the court must consider the five factors set forth in CP § 4-202. *Id.* at 662. Those factors are: "(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." CP § 4-202(d).

In *Davis*, *supra*, the Supreme Court of Maryland explained that, while all five factors must be considered, they are "not in competition with one another," but rather "are necessarily interrelated and[] . . . converge on amenability to treatment." *Davis*, 474 Md. at 464. That is because "the overarching question is whether there is 'a program in the juvenile system that can provide immediate safety to the public and make recidivism less likely.'" *Rohrbaugh*, 257 Md. App. at 662-63 (quoting *Davis*, 474 Md. at 465). Thus, if there is no available program in the juvenile system that is competent to address the child's issues and from which the child could benefit "in a way that will produce better results than anything in the adult system and significantly lessen his danger to the public, a [transfer] request should be denied[.]" *Davis*, 474 Md. at 465-66.

In the present case, the circuit court expressly recognized the five statutory factors and the importance of considering each factor with an eye toward Appellant's amenability to treatment. The court also made specific findings with respect to each factor. Regarding Appellant's age, the court noted that Appellant, who was nearly seventeen years old at the time of the transfer hearing, would be eligible for services

through DJS for only about four years. The court noted further that Appellant had been receiving such services since November 2017, or for approximately five years, and yet had ended up being charged with committing a violent crime. The court concluded that those circumstances did not support a finding that Appellant was amenable to treatment through DJS or that additional services from DJS would increase public safety.

As to Appellant's mental and physical condition, the court observed that Appellant had, at one time or another, been diagnosed with a variety of mental-health issues. The court concluded that there was "no evidence" to indicate that DJS could address Appellant's mental health better than the adult correctional system and that, if anything, there was "ample evidence to suggest the opposite." The court noted that, while at Woodbourne Center, a residential treatment facility, from December 2018 to November 2019, Appellant was involved in 13 fights in the first six months of treatment and later had difficulty applying his lessons in therapy to his daily life.

As to the nature of the offense, the court found that that factor had "no independent significance." The court found, therefore, that the nature of the offense did not weigh for or against the Appellant's transfer request.

As to Appellant's amenability to treatment, the court was "not convinced that the services at DJS would provide a better benefit than anything available in the adult system." The court noted that Patuxent Institution, an adult facility, specialized in serving inmates who have mental health issues and offered several programs geared towards mental health wellbeing. The court noted that, although there was some evidence to

suggest that the juvenile system had better programs for trauma sufferers, the evidence of trauma in Appellant's case was "scant" given that Appellant's alleged trauma was based almost entirely on "self-reporting information." The court reiterated that Appellant could participate in programs and receive treatment in the adult system. The court also reiterated that Appellant had already received extensive services through DJS and yet was now being charged with a violent crime. The court concluded that Appellant did not meet the definition of "amenable," as defined by the Supreme Court of Maryland in *Davis*.

Finally, regarding public safety, the court again observed that the treatment Appellant had received in the juvenile system had not significantly decreased his danger to the public. The court ultimately found that there was no program in the juvenile system that would produce a better result than the adult system and significantly lessen Appellant's danger to the public.

Against that backdrop, we hold that the circuit court did not abuse its discretion in denying the Appellant's transfer motion. The court evaluated all five statutory factors in considerable detail and with a clear focus toward Appellant's amenability to treatment in the juvenile system. The court weighed all the evidence, including the evidence presented by Appellant, and concluded that he had failed to carry his burden of showing that a transfer was appropriate. That conclusion was based on the reasonable inference that, because Appellant had already received extensive services through DJS in the years leading up to being charged in the instant case, additional services were unlikely to

produce better results than anything in the adult system or significantly lessen Appellant's danger to the public.

Appellant puts forth several arguments as to why he believes the court abused its discretion. First, Appellant contends that the court, in considering the "age" factor, failed to give appropriate weight to Dr. Kaplan's testimony, which established that treatment in the juvenile system would be better for Appellant and society. Second, Appellant contends that the court erred in concluding: that evidence of his trauma was "scant," that there was "no evidence" to suggest that the juvenile system could treat Appellant's mental health issues better than the adult system, and that Appellant was not amenable to treatment in the juvenile system because past attempts at rehabilitation had been unsuccessful and because he had been described as dominant. Third, Appellant asserts that the court, in considering the "public safety" factor, assigned too much weight to his prior treatment in the juvenile system, which resulted in an analysis that was "retrospective rather than prospective."

We are not persuaded by any of Appellant's arguments. To begin with, the court properly considered Appellant's age in determining his amenability to treatment. The court noted that, because Appellant was nearly seventeen years old, his access to services in the juvenile system would terminate in only a few years, which was likely an insufficient amount of time given the nature of Appellant's needs. *See Gaines v. State*, 201 Md. App. 1, 18 (2011) (noting that the seventeen-year-old juvenile's age "weighed against" his transfer to the juvenile system); *Brown v. State*, 169 Md. App. 442, 450

(2006) (finding that the juvenile's age was a "strong factor against transfer because the [juvenile] was so close to being an adult.") (internal quotations omitted). The court also noted that Appellant had been receiving services through the juvenile system for several years and yet his recidivism had not improved. *See Rohrbaugh*, 257 Md. App. at 662-63 (noting that "the overarching question" in a transfer decision is whether the placement in juvenile system "can . . . make recidivism less likely") (quoting *Davis*, 474 Md. at 465). The court reasonably concluded that those circumstances did not support Appellant's transfer request.

To be sure, Dr. Kaplan did testify that both Appellant and society would be better served if Appellant were treated in the juvenile system rather than the adult system. But the court was under no obligation to accept the testimony of Dr. Kaplan, an expert witness hired by Appellant to testify on his behalf. *See K.B. v. D.B.*, 245 Md. App. 647, 681 (2020) ("It is the province of the fact-finder to determine which expert testimony, if any, to accept, and which expert testimony to reject."). The court's rejection of Dr. Kaplan's assessment was all the more reasonable given that Appellant's prior involvement in the juvenile system, which spanned five years and included extensive services, culminated in him being accused of pistol whipping an individual with a loaded handgun and shooting a seven-year-old bystander. *See Rohrbaugh*, 257 Md. App. at 665 (concluding that the trial court properly considered the juvenile's history of treatment in the juvenile system and the juvenile's subsequent gun-related charges). In short, aside from Dr. Kaplan's testimony, which the court clearly discounted, there was little, if any,

evidence in the record to suggest that treatment in the juvenile system would produce better results than anything in the adult system and significantly lessen Appellant's danger to the public.

Second, we see nothing wrong with the weight the court gave to Appellant's prior treatment in the juvenile system or with the court's reliance on that treatment in assessing the likely efficacy of continued treatment in the juvenile system. In the five years leading up to being charged in the instant case, Appellant had been subjected to secure detention six times, community detention two times, electronic monitoring eight times, and community-based rehabilitation three times. During that time, Appellant received medication services, therapeutic counseling, and substance abuse counseling. Appellant also spent nearly one year at Woodbourne Center, a residential treatment facility, where he received therapy and other services. According to Ms. Williams, a DJS supervisor, the treatment Appellant received at Woodbourne Center was "more therapeutic" than the treatment he would receive at the youth center where he would likely be placed if his case were transferred to the juvenile court. Ms. Tubman, Appellant's caseworker through DJS, also explained that, in the approximately three years that Appellant was under her supervision, DJS had maximized its efforts at providing services to meet Appellant's needs.

Based on that evidence, it was reasonable for the court to conclude that Appellant would have rather slim chances of success in the juvenile system. Although there was some evidence that Appellant had responded, and may continue to respond, to his prior treatment,

the record as a whole suggested that additional treatment in the juvenile system would be, if not futile, unlikely to produce better results than anything in the adult system. We cannot say, therefore, that the court abused its discretion.

We likewise cannot say that the court erred or abused its discretion in finding that the evidence of trauma was "scant" and that there was "no evidence" to suggest that the juvenile system could treat Appellant's mental health issues better than the adult system. As the court pointed out, virtually all the evidence of Appellant's alleged trauma was reported by Appellant himself, with no independent verification of the nature or extent of said trauma. To the extent that there were some reports of Appellant's behaviors that may, according to Dr. Kaplan, suggest "clinically significant signs of PTSD," Dr. Kaplan acknowledged that she herself did not see such signs.[6] While Appellant had previously been diagnosed with one or more trauma-related disorders, no such diagnosis was made following the most recent evaluation conducted by Dr. Kaplan.[7] The court was well within its discretion to question the evidence of trauma.

The court was also well within its discretion to conclude that there was no evidence to suggest that the juvenile system could treat Appellant's mental health issues better than the adult system. Practically all the evidence in support of Appellant's transfer

[6] Citing a psychiatric evaluation of Appellant in 2018, Dr. Kaplan explained that Appellant's "hypervigilance, exaggerated startled response, and fear of showers[,]" as mentioned in the evaluation report, could be potential signs of PTSD. In denying Appellant's motion to transfer, the trial judge alluded to Dr. Kaplan's testimony.

[7] The trial judge made a similar observation, noting, "[i]n the [previous] reports [regarding Appellant's mental health], for example, exists a diagnosis of intermittent explosive disorder, but strangely it doesn't exist in the most recent report or evaluation."

motion came from Dr. Kaplan, and the court clearly did not find Dr. Kaplan's opinion persuasive in light of the overwhelming evidence establishing the general inadequacy of the juvenile system in treating Appellant's mental health issues in a way that provided immediate safety to the public and made recidivism less likely. In short, although the court stated that there was "no evidence," it is clear that the court meant that there was no *credible* evidence. Again, the court was under no obligation to accept any of Dr. Kaplan's testimony, and the court's refusal to do so was not an abuse of discretion.

In sum, we hold that the court did not abuse its discretion in denying Appellant's transfer motion. Appellant, as the moving party, had the burden of presenting evidence to show by a preponderance of the evidence that a transfer of the court's jurisdiction was in the interest of Appellant himself or society. The court, as the factfinder, was obligated to assess that evidence, as well as any opposing evidence, and determine, based on the five statutory factors, whether there was a program in the juvenile system from which Appellant could benefit in a way that would produce better results than anything in the adult system and significantly lessen his danger to the public. In so doing, the court was permitted to highlight evidence it found credible and to disregard evidence it found unpersuasive. *E.g.*, *Byrd v. State*, 13 Md. App. 288, 295 (1971) (noting the trial court's determination on the evidentiary weight and witness credibility would not be disturbed on appeal unless clearly erroneous). That the court discounted certain evidence, *i.e.*, Dr. Kaplan's testimony, while emphasizing other evidence, *i.e.*, Appellant's past treatment in the juvenile system, was not an abuse of discretion.

II.

Parties' contentions

Appellant next claims that the evidence adduced at trial was insufficient to sustain his convictions of first and second-degree assault against K.H. Appellant notes that, in order to prove those charges, the State needed to prove that he acted recklessly when he hit C.G. in the head with the loaded firearm, causing a bullet to discharge and strike K.H. Appellant contends that any evaluation as to the "recklessness" of his behavior required the factfinder to consider all relevant circumstances, which necessarily included his adolescence. He asserts, in other words, that the State could not simply show that his conduct was objectively reckless; rather, the State needed to show that his conduct was reckless for a child. He argues that, based on that standard, the evidence was insufficient.

The State contends that the evidence adduced at trial was legally sufficient to sustain Appellant's convictions. The State argues that the court was not required to consider Appellant's age in reaching a verdict.

Standard of Review

"The standard for appellate review of evidentiary sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (internal quotations omitted). "When making this determination, the appellate court is not required to determine 'whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *Roes*

v. State, 236 Md. App. 569, 583 (2018) (citing *State v. Manion*, 442 Md. 419, 431 (2015)). "This is because weighing the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *Scriber*, 236 Md. App. at 344 (citations omitted). "Thus, the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Id.* The same standard applies in a jury trial and a bench trial. *Purnell v. State*, 250 Md. App. 703, 711 (2021). Moreover, "[t]he issue of legal sufficiency of the evidence is not concerned with the findings of fact based on the evidence or the adequacy of the factfindings to support a verdict." *Chisum v. State*, 227 Md. App. 118, 129 (2016). Rather, it is an objective measurement, "concerned, in the abstract, with what any judge, or any jury, anywhere, could have done with the evidence." *Id.* at 129-30.

Analysis

In order to prove the elements of first- and second-degree assault, the State needed to show: "1) that [Appellant] caused offensive physical contact with the victim; 2) that the contact was the result of an intentional or reckless act of [Appellant] and was not accidental; and 3) that the contact was not consented to or legally justified." *Pryor v. State*, 195 Md. App. 311, 335 (2010). Appellant does not dispute that he caused physical contact with K.H. or that the contact was not accidental, not consented to, and not legally justified. Appellant's argument is limited to whether his conduct was "reckless."

"The test we use to determine if a defendant's conduct was reckless is whether the conduct, viewed objectively, constitutes a gross departure from the type of conduct that a law-abiding citizen would observe under similar circumstances." *Jones v. State*, 357 Md. 408, 430 (2000). "[W]hether a defendant's actions constitute [recklessness] turns on whether those actions under all the circumstances amounted to a disregard of the consequences which might ensue to others." *Elias v. State*, 339 Md. 169, 184 (1995).

We hold that sufficient evidence was presented at trial to sustain Appellant's convictions of assault against K.H. That evidence established that, on the day of the shooting, Appellant accosted the primary victim, C.G., in broad daylight and in a public place where several other bystanders had gathered. Upon approaching C.G., Appellant brandished a loaded firearm, "cocked the gun," and struck C.G. in the face with the firearm. When Appellant struck C.G., the firearm was pointed at K.H., who was standing next to C.G. The firearm immediately discharged a bullet, which struck K.H. in the head, nearly killing him. Afterward, Appellant fled the scene and returned home, where he changed his clothes. Appellant was later arrested, and the firearm used in the shooting, a nine-millimeter handgun, was recovered from Appellant's home. According to Sergeant Flynn, an expert in firearms, the handgun used in the shooting contained so many safety features that it was "basically impossible for the gun to just go off."

From that evidence, a reasonable factfinder could have concluded that Appellant was reckless in causing K.H. to be shot in the head. First, it is beyond cavil that striking a person in the face with a cocked and loaded firearm, while that firearm is pointed at a

nearby individual, constitutes a gross departure from the type of conduct that a law-abiding citizen would observe under similar circumstances. Appellant's actions were, objectively speaking, reckless.

Moreover, a reasonable inference could be drawn from the attendant circumstances that Appellant's actions amounted to a clear and deliberate disregard of the consequences of those actions. Appellant's act of "cocking the gun," when considered in conjunction with Sergeant Flynn's testimony regarding the gun's safety features and the unlikelihood that the gun fired accidentally, suggests that Appellant consciously prepared the gun to be fired prior to striking C.B. A reasonable person, or even a reasonable adolescent, in Appellant's position should have known that a loaded, ready-to-fire gun may discharge if it is further manipulated. That Appellant continued with the attack on C.B. anyway, and that he did so while pointing the gun at K.H., suggests that Appellant disregarded the consequences that might ensue to K.H. Thus, the evidence presented at trial was sufficient to sustain Appellant's convictions of assault against K.H.

As discussed, Appellant insists that, because he was a child when the shooting occurred, his conduct must be evaluated based on how a similarly situated individual, *i.e.*, another child, would have acted. Appellant argues that "[w]hile the evidence may be sufficient to establish criminal negligence for an adult who owns, operates, and loads a gun, it is insufficient to establish that an adolescent had evaluated and appreciated the risk that a gun could fire (if they knew it was loaded), while using it to hit someone." Appellant contends that, under that standard, the evidence was insufficient because the

State failed to establish that he, a child, knew how to operate the gun, that he had the ability to recognize the inherent risks involved in handling the gun, that he knew the firearm was loaded and operable, or that he actually knew how to disengage the gun's safety features.

We remain unpersuaded. First, Appellant fails to cite, and we could not find, any Maryland case in which either this Court or the Supreme Court of Maryland held, or even suggested, that a factfinder was required to consider a defendant's age when evaluating whether he was criminally reckless. Regardless, if that were the appropriate standard, the evidence would still be sufficient to sustain Appellant's convictions. As discussed, the evidence established that Appellant carried a loaded gun to a public place, primed the gun to fire, and hit C.G. in the face with the gun, all while pointing the gun at K.H. Such behavior was, objectively speaking, a gross departure from the type of conduct that a law-abiding sixteen-year-old would observe under similar circumstances.

To be sure, the State did not demonstrate that Appellant knew how to operate the gun, that he knew the gun was loaded and operable, or that he had the ability to recognize the inherent risks involved in handling the gun. But the State was not required to establish any of those facts. That is, the State was not required to prove that Appellant had *actual* knowledge regarding the operability of the gun or the risks inherent in using a gun. *See Pryor*, 195 Md. App. at 335 (requiring intent *or* recklessness as the requisite *mens rea* for first- and second-degree assault). Rather, the State needed to show that, under all the circumstances, Appellant's conduct constituted a gross departure from the type of

conduct that a law-abiding citizen would observe under similar circumstances, and that the conduct amounted to a disregard of the consequences which might ensue to others. We conclude that the State made such a showing and therefore the evidence was sufficient.

JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.